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Religions, diversities and human rights: Public policies for democratic coexistence

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Governance of religious diversity: current challenges and approaches to democratic coexistence. Introduction to the monograph

Gobernanza de la diversidad religiosa: desafíos y enfoques actuales para la convivencia democrática. Introducción al monográfico

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Summary: Introduction. 1. Challenges to the governance of religious diversity. 2. The contributions of the special issue. 2.1. Reconceptualizing secularism and questioning state neutrality. 2.2. The governance of diversity. 2.3. Decolonizing human rights frameworks. Concluding remarks. References.

Abstract: This article reflects on the public governance of cultural and religious diversity. Religious traditions have long shaped dominant cultural patterns in Western societies, which now face the challenge of ensuring harmonious coexistence among groups with diverse beliefs and ways of expressing them. In democratic systems where majorities tend to prevail, it is

essential to develop approaches that enable the meaningful inclusion of minority perspectives. Although policymaking in this area is primarily a national or regional level competence, local public institutions —due to their proximity to citizens— are often the first to address demands for religious accommodation, despite frequently lacking the capacity to respond effectively to an increasing religious diversity, and the different customs and practices related to it. This special issue brings together interdisciplinary contributions from the social sciences that pay particular attention to local and regional experiences in the governance of religious diversity and policy innovations across different national contexts and policy fields.

Keywords: Religious diversity, minorities, human rights, public policies, democratic coexistence, inclusion.

Resumen: Este artículo propone una reflexión sobre la gestión pública de la diversidad cultural y religiosa. Las tradiciones religiosas han configurado durante largo tiempo los patrones culturales dominantes en las sociedades occidentales, que hoy afrontan el reto de garantizar una convivencia armoniosa entre grupos con creencias diversas y distintas formas de expresarlas. En los sistemas democráticos, donde las mayorías tienden a prevalecer, resulta esencial desarrollar enfoques que permitan la inclusión significativa de las perspectivas minoritarias. Aunque la formulación de políticas en este ámbito corresponde principalmente al nivel nacional, las instituciones públicas locales —debido a su proximidad a la ciudadanía— suelen ser las primeras en atender las demandas de acomodación religiosa, a pesar de carecer con frecuencia de la capacidad necesaria para responder de manera eficaz al aumento de la diversidad religiosa. Este monográfico reúne contribuciones interdisciplinarias de las ciencias sociales, prestando especial atención a experiencias locales y regionales, así como a innovaciones en políticas transferibles a distintos contextos y ámbitos de política pública.

Palabras clave: Diversidad religiosa, minorías, derechos humanos, políticas públicas, convivencia democrática, inclusión.

Introduction[1]

In recent decades, the relationship between religious diversity and democratic values has become a central issue in European public debate. The growing presence of minority religious communities —particularly Muslim and evangelical groups— has prompted social and political reactions that challenge the principles of equality, freedom of worship, and pluralism upon which liberal democracies are founded (Kivisto and Juergensmeyer 2020; Koenig 2023). In several European countries, the rise of Islamophobic discourses and the politicization of religion have also contributed to reshaping the boundaries of citizenship and national belonging, with important consequences for social cohesion and democratic legitimacy (Brubaker 2017; Modood 2019). According to authors such as Juergensmeyer (2019), developments including Brexit or the election of Donald Trump reflect the emergence of a new form of nationalism that has characterized the second decade of the twenty-first century. Much of this phenomenon has been associated with religion and, more specifically, with the Muslim faith, through a process that Cesari (2013) conceptualizes as the "securitization of Islam".

In this context, the public governance of religious affairs and, more specifically, of religious minorities, including measures to address negative public opinions towards them, becomes of paramount importance to ensure their rights as well as a civic and peaceful coexistence of different groups in democratic societies. As Ruiz-Vieytez (2026) argues, democracy, understood as the rule of the majority, does not in itself resolve the tension between majority and minority cultural identities —and practices— in the public sphere. However, the governance of religious diversity is a challenge faced not only by Western societies. As the contributions in this special issue illustrate, this dynamic is equally evident in a variety of contexts, particularly in those characterized by ethno-religious divides, strong nationalism or secular states accommodating new demographic groups.

The level at which governance of religious matters occurs constitutes another crucial dimension of policymaking and research related to religious diversity. While policymaking in this area tends to be a national or regional level administrative competence, due to their

[1] This introductory chapter was collaboratively written by the guest editors of the special issue. The lead author conceptualized the overall framework and drafted the analysis of the contributions. The coauthors focused on refining and expanding the challenges and conclusions sections.

proximity to citizens, local public institutions are often the first to receive demands for religious accommodation and to mediate their acceptance among other social groups. However, local institutions often lack the capacity to respond effectively and positively to the growing religious diversity within their populations (Ruiz-Vieytez 2026).

Consequently, this special issue aligns with expanding scholarship consolidating a shift from studies focused on macro-level national frameworks towards distinct subnational configurations of religious accommodation (Griera 2012; Dick and Nagel 2017; Martínez-Ariño 2018, 2021; Astor et al. 2019). It underscores the local turn in migration and diversity studies (Poppelaars and Scholten 2008; Hoekstra 2015; Martínez-Ariño et al. 2019; Zapata-Barrero et al. 2019) by exploring how different actors manage, negotiate and experience religious pluralism, presenting innovative practices of local mediation and governance designed to navigate complex claims and to balance competing interests.

More concretely, this special issue addresses the above-mentioned challenges by bringing together contributions that propose innovative ideas for policy-making at the local and regional levels in Europe and the Global South. Drawing on fields such as law, political science and sociology, the ten articles offer distinct disciplinary and robust interdisciplinary perspectives to analyze contemporary governance of religion in diverse settings. This special issue starts out from research conducted in the framework of the project "Religious diversity and democratic coexistence: analysis and proposals for municipal policies (DIVERPOMU)", financed by the Spanish State Research Agency, Ministry of Science, Innovation and Universities (project number PID2023-149877NB-100). As part of this broader project, the special issue explores how contemporary democracies navigate religious phenomena that transcend the private sphere, thereby challenging traditional governance models in increasingly complex contexts driven by multiple factors.

1. **Challenges to the governance of religious diversity**

Some of the main challenges to the governance of religious diversity in democratic societies concern the everyday practical interactions between state and non-state actors at the local level. In what follows, we highlight three such challenges, which may vary across contexts and historical moments: a) the representation and representativeness of religious groups; b) the structural tension that

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exists in the governance of religious diversity between the recognition and the control of minority groups; and c) finally, the risk of instrumentalizing religious groups and actors.

First, local governance approaches to religious diversity often rely on direct relations between local state administrations, and leaders and representatives of religious organisations and communities. Such collaborations often happen in what has often been called "governance networks" (Martikainen 2016). In such structures, actors from different religious communities tend to often be selected by state actors. This selection of "representatives" comes with several problems. Local administrations tend to select those leaders and actors they know well and who usually come from the more "mainstream" branches of religious groups, especially those considered under the framework of "World Religions" (Bauman and Tunger-Zanetti 2018). This point is particularly challenging regarding Muslim communities, as state actors often fear selecting Muslim representatives whom they might consider inappropriate, based on the belief that they follow more "extreme" versions of Islam or have "questionable" international ties, among other things. This issue with the selection of representatives comes with the problem that the networks and collaborations reproduce inclusion and exclusion dynamics (Martínez-Ariño 2021). Moreover, religious actors often lack representativeness and legitimacy among the community of religionists they supposedly represent (Chapman and Lowndes 2009). The risk of them being approached as representatives is that they become "professional representatives", which may come with a distancing from their community of origin.

Second, governance of religious diversity often becomes a double-edged sword that offers recognition and exerts control (Martínez-Ariño 2021). On the one hand, policies are often implemented that recognise the variety of religious groups present in a territory. Religious groups, in particular minorities, tend to make claims for their rights to be recognised. This recognition frequently comes with benefits, such as more public visibility as well as legitimacy. On the other hand, recognition often is accompanied by different forms of control, especially in relation to religious minorities. One such example could be the provision of public funding for the cultural activities of a religious group that comes with certain requirements and the supervision of public authorities. While *per se* not always necessarily negative, such forms of control tend to impact purportedly "suspicious" minority groups disproportionally.

Finally, through the governance of religious diversity, religious actors tend to play new roles which may lead to their instrumentalization by

state authorities. In other words, given that religious actors may offer valuable resources to political and administrative authorities (Dinham and Lowndes 2008), their collaboration with them may make of them mere instruments of public policy and publicity. In other words, they may switch roles from being advocates for their religious group to acting as agenda carriers of state actors (Martínez-Ariño 2021). As such, religious actors become valuable not for who they are and who they represent but rather for what they bring to the governance table.

The current landscape of challenges to the governance of religious diversity is further influenced by political and mediatic discourses. While these are most often national-level discourses, they have consequences both at the national and local levels. At the national and supranational levels, such discourses undermine the liberal principles of equality and pluralism of democratic societies by excluding certain minorities from national belonging (Brown 2022). Furthermore, such discourses are meant to shape majority members' attitudes towards minorities, which might, ultimately, also affect the relationship between them at the local level.

Given the fundamental influence of political actors and the media on public opinion, political parties play a central role in articulating attitudes toward ethnic and religious minorities that are rooted in democratic principles and equal rights. The public discourses that gain the most resonance are often those expressing stances against certain national, ethnic, and religious groups. In Europe and North America, a common feature of many of these discourses is what some scholars have called the securitization of Islam —that is, its discursive construction as a threat to Western nations, society, or culture. A political issue becomes a security matter when a "securitizing actor" —a political leader or another type of recognized authority, such as the head of an international organization— presents it as an existential threat to a referent object, such as the state, a nation, a civilization, cultural identity, or the environment. Through a securitizing discourse, this actor seeks to convince an audience that said threat justifies the adoption of exceptional measures that go beyond ordinary politics (Waever et al. 1993; Buzan et al. 1998). In the last two decades, Islam has been framed as being incompatible with modernity and secularism, and subject to an increasing process of securitization within the European public sphere, where issues regarding religion and cultural diversity have come to be treated as potential threats to security and national cohesion (Cesari 2013; 2021; Modood 2019; Kaya 2020). By conceiving Islam as a radical ideology —and thus something that

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cannot be treated like other religions— this discourse legitimizes exceptional policy measures.

This discursive link between Islam, immigration, and radicalization has contributed to redefining the boundaries of belonging, eroding the liberal principles of equality and pluralism upon which European democracies are built (Brown 2022). While securitization usually refers to political acts that enable the implementation of exceptional measures —such as increased military presence or police controls— carried out by governments, often in violation of the rule of law to preserve citizen safety, Cesari (2013) argues that beyond the visibility of these exceptional measures, securitization also influences administrative routines and ordinary legislation, negatively affecting the exercise of religious freedom. The result is a state of securitized governmentality, in which Muslim subjects are managed simultaneously and paradoxically as populations to be integrated and as potentially suspicious collectives (Cesari 2013). As an example of this state, Cesari (2018) explains that when Muslims assert their religious affiliation through distinct attire or participation in religious practices in public spaces, they come to be considered politically suspicious and promoters of a global ideology presented as a threat to European nations.

In his comparative study between national populisms in Northern and Western Europe versus those in North America and Central and Eastern Europe, Brubaker (2017) develops a similar argument. He proposes that the rise of right-wing populism in Northwestern Europe has been accompanied by a shift from classical nationalism toward forms of "civilizationalism", in which Islam is constructed not only as a religious or cultural difference but as an existential threat to a supposedly secular and liberal European civilization. This shift allows exclusion to be articulated in supranational terms, redefining belonging not solely as membership in a nation, but as adherence to civilizational values presented as incompatible with Islam. Reflecting on these ongoing processes, Cesari (2013, 2018) argues that the rising securitization of Islam has empowered governments to implement broader controls over religions, threatening both democracy and religious freedom in Europe. By framing Islam as an exception to the European liberal order, governments are able to justify unique levels of state intervention, regulation and surveillance. According to the author, this process implies a shift from the governance of religious diversity toward its problematization in terms of security, where Islam is no longer treated as just another confession but rather as a special case associated with potential risks to the public order, social cohesion

and democratic principles. This logic of exceptionality not only legitimizes restrictive measures specifically targeted at Muslim populations but also reconfigures the field of religious governance by granting states greater authority to interfere in religious practices, institutions and expressions.

Thus, governing religious diversity today requires navigating not just localized prejudices, but a structured, transnational narrative that aligns immigration and minority religious practices with a civilizational danger, complicating the formulation of inclusive policies for belonging and democratic coexistence. This trend could be exemplified by recent initiatives such as the French Anti-Separatism Law (LOI n. 2021-1109 du 24 août 2021 confortant le respect des principes de la République), which links public funding to a "republican commitment contract", framing adherence to state-defined values of liberty and equality. Similarly, the 2023 Abaya ban by French Minister of Education in state run educational establishments, reconfigures *laïcité* beyond state neutrality. This civilizational boundary-making is not restricted to direct expressions of faith, it extends to socio-spatial policies and integration development plans. The controversial 2018 Danish housing laws "ghetto package" provides an example of an urban intervention aimed at dismantling what was rebranded as "parallel societies" (based on non-Western background), an ethnic classification that may result in discrimination (ECJ case C-417/23). Furthermore, the Belgian ban on animal slaughtering without prior stunning, upheld by the European Court of Human Rights (2024 case of Executief van de Moslims van België v. Belgium), illustrates how progressive secular principles like animal welfare are prioritized over religious freedom.

Besides these considerations, there is a theoretical approach to the governance of religion worth noting, one which looks at whether states opt for the expansion of rights and privileges of majority religions to minorities or, inversely, limit the rights of both minorities and majorities. The first approach, most commonly found in nations in the West where Christianity constitutes the majority, is known as "thickening". The second approach, which would require nations in the Global South with high levels of religiosity to reduce the power of majority religions for the sake of the protection of human rights, is known as "thinning" (Modood and Sealy 2024). In her review of Tariq Modood and Thomas Sealy's book "The new governance of religious diversity" (2024) included in this special issue, Cristina de la Cruz-Ayuso highlights that such processes of thickening and thinning rights are not fixed or irreversible. Depending on the context, states may tend towards one or the other trends. For instance, when the possibility of

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offering religious education in public schools is opened to religious minorities, there is a process of thickening of rights to minorities. When a non-discrimination law is passed that protects against discrimination on religious grounds, there is a thinning of privileges of majority religions that could otherwise see their members privileged. A prime example of this process can be found in the administrative working environment case of the Court of Justice of the European Union (CJEU). The CJEU's ruling in OP v. Commune d'Ans (C-148/22) determined that a municipal authority could enforce a strict policy of neutrality prohibiting all employees from wearing visible religious signs. By flattening the public sphere, the state effectively trims the expressive rights of all faiths. The opposite is evident in the following example of spatial regulation in Lombardy (regional law modifying L.R. 12/2005 on the construction of places of worship), in conflict with religious diversity. Rigid building and land-use conformity laws result in urban planning used to restrict the construction of places of worship of minorities.

2. **The contributions of the special issue**

This special issue brings together ten research articles and two comprehensive book reviews that analyze the governance of religious diversity, human rights and mechanisms of inclusion and exclusion across distinct geographic and institutional settings. Together, these works problematize simplistic binaries —such as universalism versus relativism or secularism versus religion— though theoretical deliberations, empirical case studies and examples of policy initiatives that address key challenges of today's multi-religious societies at different governance levels.

2.1. *Reconceptualizing secularism and questioning state neutrality*

A set of articles questions the principles, legal structures and institutional practices through which modern states govern diversity. Despite their commitment to pluralism, Benjamin Gregg argues that liberal democracies systematically marginalize nonreligious citizens through structurally embedded theological biases. Integrating political theory with empirical social science research, he analyzes the legal asymmetries, social stigma and symbolic erasure of nonbelievers, arguing that traditional liberal neutrality is insufficient for their

inclusion. To address this, he proposes a model of what he calls "procedural pluralism" that positions atheism as the ultimate test for democratic legitimacy. According to the author, the true core of procedural pluralism lies in designing democratic institutions that ensure equal participation for all moral outlooks, which fundamentally requires recognizing atheism and nonbelief as valid forms of civic and ethical agency. For a democratic community to achieve genuine procedural legitimacy and fairness, nonreligious perspectives must be included in intercultural councils, explicitly protected by anti-discrimination statutes and shielded from social or legal stigma under freedom of conscience guarantees. Furthermore, educational and civic institutions must frame atheism not as a deficit, but as a legitimate worldview capable of grounding a moral life. Ultimately, Gregg contends that unless nonreligious viewpoints are fully acknowledged and permitted to contribute to public deliberation on their own merits —without being forced to translate their ideas into theological terms— pluralism will remain structurally biased toward religious belief, leaving the promise of democratic inclusion unfulfilled.

This conceptual critique of state neutrality relates to the comparative political analysis of Felipe Gaytán, who examines how secularism has been historically instrumentalized by the state as a political project of citizenship in three Latin American countries, whose relevance lies in the singularity of their secular imprint: Mexico, El Salvador and Bolivia. His analysis is based on the reconstruction of two historical moments of laicity. The first one is centered on the separation of church and state in the 19th century, vis-à-vis the influence of the Catholic Church and other denominations. The second moment emerges two centuries later, in contexts of increasing social, cultural and religious diversity, which entail the management and balancing of civil liberties fundamental to the exercise of human rights. Based on a qualitative-comparative methodological approach, which includes the analysis of legal documents, meta-ethnography, and interviews with different stakeholders and academics, Gaytán shows that, historically, secularism in Latin America was not a project for citizenship but a mechanism for the state to gain control of social life —in areas such as education or healthcare— from the Catholic Church. At the turn of the twenty-first century, however, regional democratization and civil society pressures shifted secularism toward a new framework focused on human rights and civil liberties. This second historical moment of secularism would be characterized by a transversal tension between two logics of rights: the right to freedom of conscience that claims the individual exercise to decide above moral and religious frameworks —with the State as

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guarantor of that self-determination— and the right to freedom of religion that constitutes the demand of confessional groups not to be excluded from the political sphere. On one side, the logic of freedom of conscience has driven the expansion of progressive rights in Mexico and protected indigenous traditions in Bolivia, though it faces deep societal resistance in security-focused nations like El Salvador. On the other side, faith-based groups —both progressive and neoconservative— demand political influence. These religious actors routinely surge into the public sphere during national crises, such as Bolivia's 2019 political fractures or El Salvador's security crackdowns, where authoritarian politics and religious discourse have fused. The author concludes that religious groups offer vital social resources and solidarity and, therefore, they can no longer be excluded from the political arena. The modern Latin American consensus would not be to banish religion from politics, but to integrate it visibly into the social agenda while defending civic ethics and human dignity from religious overreach.

Moving from political philosophy and constitutional law to institutional implementation, Yolanda Alonso Herranz examines the relationship between the right to education and freedom of conscience within international, European and Spanish legal frameworks. Rather than operating as isolated legal domains, the author argues that these two rights exist in a state of reciprocal dependency: freedom of conscience supplies the foundational values and moral convictions of a society, while education serves as the vital prerequisite enabling citizens to exercise their freedom of thought in an informed, critical and responsible manner. In today's increasingly multicultural landscape, this intersection creates distinct structural challenges, demanding that public institutions balance state neutrality and student autonomy with the rights of parents to guide their children's upbringing. To navigate these complexities, Herranz highlights how European and Spanish legal standards frequently clash with practical reality. On one hand, the European Court of Human Rights (ECHR) mandates absolute state neutrality and a strict prohibition against indoctrination, requiring that any religious curricula be delivered objectively, critically, and pluralistically to protect minority faiths and non-believers. On the other hand, Alonso Herranz's analysis reveals that while Spain's constitutional model of positive secularism attempts to mirror this by establishing cooperation agreements with Catholic, Protestant, Jewish and Islamic federations, a profound structural asymmetry remains. In practice, the Catholic Church maintains a deeply consolidated presence within the Spanish school system, whereas religious education for minority faiths is highly limited and

geographically fragmented, challenging the country's full compliance with international standards of equality and non-discrimination. To address this issue, Alonso Herranz claims that governing religious diversity cannot be reduced to merely offering segregated, faith-based classes or settling for passive tolerance. Instead, the author advocates for a modern reformulation of educational policy where religion is treated as a historical, cultural and comparative phenomenon. The author concludes that by shifting the pedagogical focus toward intercultural dialogue, critical thinking and the dismantling of stereotypes, public schools could be transformed into spaces of pluralistic coexistence. This approach would ensure that educational institutions remain entirely free from sectarian pressure while vigorously safeguarding the right of every student to embrace a faith, change it, or reject religious belief altogether.

The structural asymmetry between the Catholic faith and religious minorities described by Alonso Herranz is also discussed by Zakaria Sajir, who exposes systemic governance pathologies within Spain's religious diversity regime. Sajir argues that Spain's model of religious diversity governance is marked by a disconnect between formal commitments to pluralism and practices of systemic exclusion, producing what he describes as "stratified inclusion". In this framework, religious minorities receive symbolic recognition but remain structurally excluded from shaping the legal and civic norms that affect them. This dynamic is linked to the enduring legacy of *nacionalcatolicismo* —the fusion of national identity with Catholicism during Franco's rule—, which normalizes Catholicism as part of national culture while framing minority religions as foreign or problematic. His analysis identifies three interconnected governance failures: a paradigmatic failure that treats diversity as a technocratic issue managed from above; a normative failure characterized by selective secularism, whereby Catholicism is redefined as cultural heritage while minority religions —especially Islam— are securitized and problematized; and a territorial failure stemming from Spain's decentralized governance, which produces unequal protections of religious freedom across regions. Sajir further claims that institutional practices and judicial decisions often reinforce these hierarchies, as illustrated by court rulings on religious dress and municipal restrictions. Although formal equality is maintained, minorities are frequently reduced to passive recipients of accommodation rather than active participants in defining their rights. As an alternative to these pathologies, the author proposes a model of "networked governance" based on shared participation and distributed agency, in which religious minorities are directly involved in institutional decision-making. Sajir

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concludes that still limited, emerging local initiatives and some judicial developments suggest the possibility of a more democratic and participatory approach to religious diversity in Spain.

2.2. *The governance of diversity*

A second set of articles focuses on the institutional inclusion and exclusion of minorities and the governance of religious diversity, including a wide range of institutional responses to pluralism —from state-sponsored exclusion to local mediation— and suggesting alternative conceptual frameworks to capture complex, intersectional urban realities. José Ramón Intxaurbe's review of the edited volume *Religious minorities in pluralistic societies* (2024), coordinated by Roberta Medda-Windischer, Kerstin Wonisch, and Alexandra C. Budabin, outlines how liberal democracies frequently exhibit hesitation when moving toward the institutionalization of pluralism, viewing it as a threat to core values like justice, equality and social cohesion. Through seven empirical case studies across Europe and the Middle East, Intxaurbe explains that the book moves past abstract constitutional models to analyze concrete policies. He highlights the chapters by Kyriaki Topidi and Christos Tsevas, which evaluate the complex paradoxes of state-recognized legal pluralism in Western Thrace, Greece, specifically focusing on the ECHR ruling in Molla Salli v. Greece. This legal case —revolving around the application of Sharia law to an estate dispute against the deceased's civil will— highlights the dangerous asymmetries that occur when religious legal systems undermine gender equality. While the ECHR held that religious rules are only legitimate if they stem from free individual choice, Intxaurbe reports on the profound questions raised by Silvio Ferrari regarding whether states should intervene to "protect women from themselves" when they voluntarily submit to non-liberal norms. To mitigate these frictions, the volume would advocate for a closer integration of international human rights and national law through a process of "constitutional translation" of religious demands.

If Intxaurbe's book review shows the dilemmas that democratic states might face when moving toward the institutionalization of pluralism, especially when they perceive diversity as an inherent threat to liberal norms, Khushbu Kumar, M. Belén Blázquez and Belén Agrela provide an empirical case study of state-level institutionalized exclusion in India. They use discourse analysis to explain how Hindu nationalist rhetoric targets Bangladeshi Muslim migrants to legitimize the

systematic exclusion and marginalization of this population. The authors describe that while India was historically seen as a safe haven, the state has undergone a profound shift toward exclusion, leaving millions of displaced people in a legal vacuum because it lacks a national refugee framework and has not ratified the 1951 Convention. This vulnerability would have been intensified under the Bharatiya Janata Party (BJP), whose majoritarian goal of building a Hindu nation has institutionalized a hierarchy of rights that systematically marginalizes Muslims. According to Kumar, Blázquez and Agrela, this exclusionary vision was legalized through the Citizenship Amendment Act (CAA) of 2019, which weaponizes faith by fast-tracking citizenship exclusively for non-Muslim immigrants from neighboring countries. They contend that this discriminatory double standard violates the secular foundations of India's 1950 Constitution, while official political rhetoric strips Bangladeshi Muslim migrants of their humanity by labeling them "infiltrators". However, the authors also emphasize that this regime has faced powerful grassroots resistance, most notably through the peaceful sit-in led by Muslim women in the Delhi neighborhood of Shaheen Bagh. They describe how this local protest quickly became a national symbol of pluralism, bringing citizens of all faiths together for over one hundred days to defend secular values. Ultimately, the authors argue for a revision of the role of religion in the CAA to ensure that Muslim communities are not deprived of their rights; as well as for extending protection to excluded groups, including Muslims from neighboring countries, Rohingyas and Ahmadis, in line with India's secular constitutional values and international norms.

In contrast to this state-level exclusionary example of the accommodation of diversity but also focusing of migration-driven pluralism, Alexandra Cosima Budabin analyzes a proactive institutional mechanism for managing religious and cultural differences in South Tyrol, Italy, focusing on the implementation of intermediary actors: cultural mediators. The author explains that recent migration flows have introduced significant challenges surrounding cultural and religious differences, leaving new religious minorities to navigate complex legal human rights landscapes while trying to balance social cohesion with both majority and historical minority faiths. In response, diversity governance has increasingly relied on cultural mediators to peacefully mediate these differences. Specifically, the author explores how the role of cultural mediators has expanded to manage religious diversity and argues that this role is significantly enhanced when members of new religious minorities

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are engaged as mediators themselves, allowing them to utilize their own transcultural capital. Adopting a socio-legal approach, the author demonstrates how local frameworks can innovatively expand upon national policies. While Italy has only recently recognized its growing pluralism, South Tyrol —predominantly Catholic but with a 10% foreign-born population by 2024— has been the first province to enact specific legislation on cultural mediators. By analyzing legal texts, policy guidelines and long-standing local practices, the author traces how South Tyrol transitioned from an unsystematic training process to a structured, legitimate framework that uses mediation to advance integration, reduce daily tensions and protect minority rights. Budabin concludes that public policies at both the national and regional levels increasingly validate the inclusion of migrants as cultural mediators. This inclusion fosters new modes of civic participation and ensures that minority perspectives are actively embedded in diversity governance. While challenges regarding professionalization and uneven implementation remain, the author maintains that utilizing the transcultural capital of religious minorities bridges critical gaps in public administration, offering a vital mechanism for achieving horizontal, democratic coexistence.

Whereas Budabin focuses on cultural mediation as an institutional tool for managing religious diversity, Mar Griera and Victor Albert Blanco shift attention to the public visibility of religious difference and its regulation in urban settings, analyzing the case of public *iftars* during Ramadan. They argue that public expressions of religiosity serve as a prime lens for understanding how religious diversity is transforming contemporary European cities. They observe a profound urban paradox: while European societies are deeply secularized, they are simultaneously experiencing sustained religious pluralization driven by migration, causing religion to reemerge through highly visible collective practices in streets and squares. According to the authors, these events function as hybrid urban devices that exist at the intersection of four competing regimes: the heritage regime (which translates practices into tradition), the governance regime (or administrative regulation), the relational regime (based on social interaction) and the devotional regime (as a sacred ritual). To analyze these dynamics, the authors utilize a conceptual framework including spatial inscription, governance, social representations and cultural resources like gastronomy and music, drawing on qualitative fieldwork conducted in Madrid and Barcelona. As an Islamic ritual shifted into open public squares, the public *iftar* embodies the complex friction between devotion and

conviviality, administrative visibility and regulation, and institutional recognition and societal suspicion. While these events foster interreligious dialogue, they also expose persistent urban inequalities, as "neutral" public administration often coexists with deeply rooted symbolic hierarchies, meaning that different faiths do not access public visibility on equal terms. The article concludes that by temporarily interrupting the everyday urban order and using sensory mediators like food or music, these public events do more than just reflect diversity, they actively produce, represent and renegotiate the boundaries of religious coexistence and legitimacy in increasingly diverse urban environments.

While the previous articles illustrate how states and municipalities struggle to manage pluralism through rigid institutional structures or localized spatial regulations, Peter Scholten critiques the dominant political discourses of urban crisis and polarization in Dutch cities and proposes Steven Vertovec's concept of "superdiversity" (2007) as an umbrella framework to explain the intersectional social complexity that characterizes many urban environments. The article is based on the understanding that what political discourses often misinterpret as crisis or polarization is actually a failure to understand the social complexity of superdiverse cities. Using the Netherlands as a primary case study, the author explains that urban diversity is no longer about clearly defined minority groups, but rather an intricate tangle of intersectional factors —including religion, socio-economic status, gender and legal status— making diversity a characteristic of society. When rigid institutional categories are forced onto this fluid reality, it fuels public anxiety and a false sensation of societal fragmentation. To address this challenge, Scholten outlines three core dimensions of public policy that must be restructured. First, policy coordination must shift both horizontally and vertically. Horizontally, diversity can no longer remain isolated in a single administrative silo or managed by a standalone minister; it must be mainstreamed across general policy sectors like housing, education, and labor. Vertically, superdiversity requires a local turn toward custom district-level development and municipal autonomy, as seen in the distinct approaches of Dutch cities like Eindhoven or Rotterdam, rather than centralized, one-size-fits-all national mandates. Second, the article advocates for a shift in policy language toward a plural, needs-based idiom. Reviewing the Dutch context, he notes how official terminology has evolved from "guest workers" to "ethnic minorities" and the stigmatizing term *allochtoon*, before the Scientific Council for Government Policy recommended using "citizens with or without

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a migration background" in 2016. Scholten argues that instead of automatically using fixed ethnic categories —which pre-problematizes specific groups— policies should use flexible alternatives driven by specific problems. For instance, addressing structural racism requires looking at skin color and origin, while addressing unemployment should prioritize factors like class and parental education. This nuance is especially critical in countries like the Netherlands and Germany, where data is dictated by official state registers rather than self-reported censuses, which can artificially reinforce the illusion of homogenous groups. Finally, superdiversity transforms how institutions must collaborate with civil society. Scholten critiques traditional, exclusive consultation models that rely solely on group-specific ethnic or religious organizations, as this approach forces an "ethnic lens" that blinds policymakers to broader inequalities. However, rather than ceasing cooperation entirely, he suggests embedding these groups within a broader network of neighborhood associations, youth clubs, and anti-discrimination NGOs. Scholten concludes that superdiversity is an undeniable global fact, and managing it successfully requires network governance, flexible categorizations, and localized customization to foster genuine, horizontal coexistence.

2.3. *Decolonizing human rights frameworks*

The last set of papers pushes the borders of the special issue into post-colonial contexts, challenging Western-centric, individualist configurations of human rights and knowledge production. Cristina de la Cruz-Ayuso provides a critical evaluation of Tariq Modood and Thomas Sealy's book *The new governance of religious diversity* (2024). The review notes that the 20th-century Euro-centric secularization thesis —based on a strict separation of religion and politics— has been thoroughly dismantled by 21st-century realities where religion remains a vibrant public force, which requires a more flexible, global framework called "multicultural secularism". At the heart of her analysis is the book's novel concepts for analysing how different countries actually manage diversity. Modood and Sealy introduce the concepts of "dominant operative norms" (the foundational laws of a state) and "qualifying operative norms" (the flexible adjustments made in practice). De la Cruz-Ayuso notes that this distinction explains why two officially secular countries can handle religious minorities in entirely different ways. The book applies this across more than twenty

countries, revealing a global divide: Western nations with historic Christian majorities must undergo an institutional "thickening" (expanding existing privileges) to accommodate new minority faiths like Islam, while deeply religious nations in the Global South require a "thinning" or reducing of majoritarian religious power to protect universal human rights. The review concludes that, in a world fractured by migration anxieties and populist politics, Modood and Sealy successfully redefine secularism not as a tool to restrict religion, but as a democratic mechanism to ensure every citizen has a voice.

The post-colonial countries' struggle to protect universal human rights against inherited, Euro-centric legal structures and majority religious power explained by Modood and Sealy is illustrated by Oluwaseun Olanrewaju in his examination of the systematic marginalization of the Yoruba indigenous religion (Ìṣẹ̀ṣẹ) in South-West Nigeria. Olanrewaju argues that conventional human rights frameworks, which focus narrowly on individual religious freedom, are structurally inadequate to address the systemic discrimination faced by practitioners of Ìṣẹ̀ṣẹ. Because Ìṣẹ̀ṣẹ is not merely a faith but a comprehensive Indigenous Knowledge System with its own ethical, philosophical and historical frameworks, its marginalization constitutes epistemicide, that is, the systematic silencing and delegitimization of indigenous ways of knowing. The author explains that severe demographic decline of Ìṣẹ̀ṣẹ practitioners in modern South-West Nigeria (1.3% of the population) subjects them to social prejudice from Abrahamic perspectives that reduce their tradition to derogatory labels like "barbarism" or "idol worship". Institutional exclusion also persists by government policies routinely ignoring the spiritual and cultural dimensions of the tradition, and constitutional protections for religious freedom being rarely applied effectively to its practitioners. Olanrewaju notes that this marginalization is further exacerbated by a leadership vacuum in policymaking, driven by a severe underrepresentation of Ìṣẹ̀ṣẹ practitioners within government institutions. To resolve these democratic and cultural deficits, the article calls for a paradigm shift from simple legal protections to a framework of epistemic justice by demanding federal and state governments to anchor public policies in an analytical framework that formally recognizes and legitimizes Ìṣẹ̀ṣẹ as a vital component of Yoruba epistemology. Because the state's policy responses remain slow and superficial, Olanrewaju concludes that the responsibility for driving this transformation falls on non-state actors, specifically Ìṣẹ̀ṣẹ practitioners and traditional Yoruba rulers. Through strategic advocacy, these custodians must pressure the state to implement

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public re-education and robust policy protections that treat Ìṣẹ̀ṣe as a valuable cultural and intellectual heritage.

While Olanrewaju calls for a paradigm shift to rescue minority Indigenous Knowledge Systems from Euro-centric legal limitations, a parallel critique of Western-centric models is developed by Nafiz Absar Mahmood, whose article focuses on the tension between Western rights-based policing models and duty-oriented moral frameworks in non-Western societies like Nigeria, Egypt and India. While liberal democracies prioritize individual autonomy, procedural safeguards, and protection against state overreach, many collectivist societies (influenced by Confucian, Islamic, Hindu or African communitarian worldviews) define justice through social harmony, obedience, and relational obligations. Mahmood emphasizes that these two systems are not mutually exclusive binary opposites but rather poles on a normative continuum. The core problem addressed in the article is that the uncritical imposition of rights-based law enforcement frameworks —often driven by international norms or external actors— frequently faces cultural resistance. The author notes a vital analytical nuance regarding this resistance: while much of it would stem from a genuine misalignment of moral values, some resistance would be instrumentalized by traditional elites, elders and patriarchal authorities to protect their own privilege. Based on a literature review and comparative research design, the article evaluates legal theory, moral philosophy and specific case studies from Nigeria, Egypt and India. It analyzes how informal justice mechanisms —such as jirgas, panchayats and religious or customary courts— maintain strong local legitimacy. These informal systems would persist because they offer accessibility, familiarity and social cohesion, even when some of their structural practices directly contradict international human rights standards. Rather than falling into a binary of universalism versus relativism, Mahmood advocates for hybrid justice models (such as those in South Africa, Indonesia, and Jordan) and context-sensitive reform strategies that integrate traditional customary laws or informal mediation mechanisms with constitutional human rights, establishing a pathway toward cultural legitimacy without sacrificing fundamental rights protections. He concludes that while the core, non-derogable floor of universal human rights must be strictly maintained to protect women, minorities and marginalized groups from systemic harm, policing reforms must simultaneously engage with and respect local duty-oriented traditions. This could be achieved by embedding universal rights within existing, culturally resonant moral frameworks, in which policing would not be a mere tool of top-down enforcement but a legitimate vehicle for justice in morally plural societies.

Concluding remarks

The contributions to this special issue analyze the governance of religious diversity, human rights and the dynamics of inclusion and exclusion across various global and institutional contexts. Through a combination of theoretical analysis and empirical case studies, they collectively dismantle simplistic binaries such as universalism versus cultural relativism, or secularism versus religion, nationalism and confessionalism. Ultimately, the volume explores how contemporary, diverse societies navigate these tensions across different levels of governance to address the challenges of pluralistic coexistence.

In addition to the challenges discussed in the literature review, three additional aspects are identified across the contributions of the special issue: (1) structural biases that favor majority religions, (2) rigid, "one-size-fits-all" policy initiatives that assume homogenous minority groups and (3) Western-centric, individualist human rights frameworks that ignore collective duties and indigenous knowledge and belief systems. Regarding the first challenge, De la Cruz-Ayuso describes Modood and Sealy's concepts of institutional thickening and thinning to either expand the privileges that Christian majorities have in Western societies to religious minority groups or to reduce the religious power of majorities in the Global South to protect universal human rights. Gregg introduces the idea of procedural pluralism to highlight the necessity to include nonreligious perspectives in intercultural institutions to ensure the equal participation of all moral beliefs, including atheism; whereas Sajir refers to the concept of networked governance as an alternative to technocratic management from above that is based on shared participation and distributed agency, where religious minorities are directly involved in decision-making.

"One-size-fits-all" policy initiatives that assume homogenous minority groups do not always work to address complex societal realities and intersectional inequalities. As a response to this issue, the contributions of the special issues argue that for human rights to possess genuine democratic legitimacy and practical efficacy in pluralistic or post-colonial settings, policies need to be adapted to their respective contexts. As an overarching analytical and policy tool of complex societies, Scholten borrows Vertovec's Superdiversity framework to propose a shift toward horizontal sector-mainstreaming and a local turn in policy. Intxaurbe's book review puts forward Medda-Windischer, Wonisch and Budabin's notion of constitutional translation, which would integrate international human rights with national law through the careful translation of religious demands.

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Focusing on the local level, Budabin explains how minority group cultural mediators can be engaged by institutions to address religious and cultural differences and bridge critical gaps in the public administration.

A similar claim for a need for policy adaptation is brought up by Olanrewaju and Mahmood, who argue the imposition of Western-centric, individualist human rights approaches that ignore collective duties and indigenous knowledge systems often triggers cultural resistance or results in epistemicide. Olanrewaju advocates for epistemic justice, as a framework that formally recognizes and legitimizes indigenous epistemologies as valid repositories of knowledge. Similarly, Mahmood, supports hybrid justice models, which would be based on context-sensitive law enforcement strategies embedding universal human rights protections within culturally resonant, duty-oriented moral frameworks and informal justice mechanisms.

Through the contributions gathered in this special issue, the reader is taken on a journey that spans from procedural and normative legitimacy and the legal treatment of religious minorities, moving through the challenges of cultural diversity governance and the protection of identities against processes of exclusion, toward more participatory governance models. Collectively, this work demonstrates that the recognition of cultural and religious diversity is an essential pillar for the stability and strengthening of civil society in the twenty-first century. As discussed in the previous section, all the contributions included in this special issue illustrate that religion is a feature present in the social fabric and the public sphere that cannot be ignored by policymakers. Ultimately, this special issue underscores that democratic stability demands a proactive institutional commitment to incorporating diversity while maintaining a balance between fostering pluralism and protecting fundamental human rights.

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I

Articles

Artículos

Beyond the idea of polarization: superdiversity as an alternative perspective for Dutch cities

Más allá de la idea de la polarización: la superdiversidad como perspectiva alternativa para las ciudades en los Países Bajos

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Summary: Introduction. 1. Superdiversity. 1.1. Defining superdiversity. 1.2. Superdiversity and policy. 2. The Dutch case: polarization versus superdiversity. 2.1. Background of superdiversity in the Netherlands. 2.2. Societal implications of superdiversity. 3. Superdiversity as a new perspective for policy and categorisations. 3.1. Policy complexity and superdiversity: Horizontal and vertical policy coordination. 3.2. Categorisations and policies: towards a plural idiom for superdiversity. 3.3. Collaborating in superdiversity. Conclusions. References.

Abstract: Superdiversity is challenging conventional policy discourses and policy categories. Whereas legal categories and policies assume clearly demarcated groups, superdiversity helps understand the complex intersectionalities that make up today's cities. When simplistic categories and discourses meet social complexity, this can feed sentiments of crisis and polarization. This article aims to develop superdiversity as a perspective that helps understand rather than deny social complexity. It positions The Netherlands as a revelatory case study on how superdiversity is challenging conventional policy discourses and policy categories. The article shows that discourses on crisis and polarization in Dutch societies can be better understood as misinterpretations of social complexity than as actual tensions between clearly demarcated groups. A superdiverse society involves a high degree of fragmentation, as a result of the broader processes of globalization,

individualization and technologization. Migration and diversity have come to symbolize discomfort with these processes.

Keywords: superdiversity, policy categorization, social complexity, governance, polarization, crisis.

Resumen: La superdiversidad está poniendo en entredicho los discursos convencionales sobre políticas, así como las categorías utilizadas en esas políticas. Mientras que las categorías legales y las políticas asumen la existencia de grupos claramente demarcados, la superdiversidad ayuda a comprender las complejas interseccionalidades que surgen en las ciudades de hoy en día. Cuando categorías simplonas y discursos superficiales se enfrentan a complejidades sociales, pueden alimentar sentimientos de crisis y generar polarización. Este artículo pretende abordar la superdiversidad como una perspectiva que ayuda a comprender, más que a negar, la complejidad de nuestras sociedades. Presenta a los Países Bajos como un revelador caso de estudio sobre cómo la superdiversidad está cuestionando los discursos convencionales sobre políticas y las categorías que utilizan. El artículo revela que los discursos sobre la crisis y la polarización en las ciudades de los Países Bajos debieran entenderse como lecturas equivocadas de la complejidad social, más que como tensiones reales entre grupos sociales distintos. Una sociedad superdiversa implica necesariamente un alto nivel de fragmentación, como consecuencia de procesos generales de globalización, individualización y tecnologización. Las migraciones y la diversidad han pasado a representar la inquietud con este tipo de procesos.

Palabras clave: superdiversidad, categorizaciones políticas, complejidad social, gobernanza, polarización, crisis.

Introduction

Superdiversity is challenging conventional policy discourses and policy categories (Vertovec 2023). Especially at the urban level (Wessendorf 2010), where superdiversity becomes most manifest, it reveals the social complexity behind discourses on polarization, policy categories, discrimination and inclusion. Whereas legal categories and policies often assume clearly demarcated groups, superdiversity helps understand the complex intersectionalities that make up today's cities. However when simplistic categories and discourses meet social complexity, this often feeds sentiments of crisis and polarization. Therefore, the objective of this article is to develop superdiversity as a perspective that helps understand rather than deny social complexity.

The Netherlands is a revelatory case study on how superdiversity is challenging conventional policy discourses and policy categories. Diversity is not new in itself in the Netherlands, as a small country with an open economy at the crossroads of other countries, as a country with strong cultural and religious diversity domestically ('pillarization') and a country with a strong history of (de)colonization). But the nature of diversity and the degree of diversity have changed, especially in urban areas as Rotterdam, The Hague and Amsterdam. Diversity itself has become much more diverse or 'complex', no longer characterised by clearly defined groups but rather formed along multiple factors (background, religion, socio-economic status, sexuality, gender, ethnicity, legal status, etc.) that are often interrelated in complex ways. Diversity has increasingly become a characteristic of society rather than a characteristic for specific groups. In other words, the Netherlands has become a 'superdiverse society', and diversity a societal issue.

Superdiversity requires a new perspective on today's diverse cities in the Netherlands. Migration and migration-related diversity are of great importance in this respect, but in a migration society they cannot be seen separately from other forms of diversity such as socio-economic status, education, gender, etc. Policy no longer has to do with specific groups or 'minorities', but with a society with a great complexity of diversities that can come together in specific ways in individuals. Policy for the superdiverse society has therefore increasingly become general policy. For example, it is increasingly about housing and diversity, the labour market and diversity, foreign policy and diversity, neighbourhood policy and diversity, etc. This requires not only a rethinking of policy and policy categorisations, but also a different form of organisation and coordination of policy across sectors, layers

and groups. Superdiversity policy is therefore a form of complexity policy.

However, the Dutch case is also revelatory in terms of its struggles with diversity and social complexity. It is one of the countries where the idea of a migration crisis and a 'multicultural tragedy' has come to the fore most distinctly. There is a strong belief that migration and diversity are the motors behind polarization in Dutch society, which has been the single most important issue during most national parliamentary elections over the past decade or so (Scholten 2025). From a superdiversity perspective, this article challenges the idea of crisis or fragmentation due to migration and diversity; it rather argues that a crisis sensation is defined and fragmentation perceived due to a misunderstanding of social complexity in society.

This article uses the Dutch case study for developing superdiversity as a new perspective on urban policies and social categories. First, I will outline the background of superdiversity; what has changed, and what do we notice about it? Then I will look at the meaning and implications of superdiversity for society, and I will list what is known from (recent) literature. Then I will discuss more specifically the meaning of superdiversity for policy; are there policy models with policy alternatives and what do these models require in terms of policy coordination and in terms of policy language?

1. **Superdiversity**

Migration has become increasingly 'intertwined' with all kinds of other forms of diversity. Migration-related diversity is often linked in very complex ways to general processes of inclusion and exclusion that have to do with socio-economic status, education, ethnicity and gender, for example. Or consider how identity formation often has a strongly multiple character in which ethnicity, sexuality, class and other factors can play an important role. This is at odds with a social debate in which, also in politics and the media, the emphasis is often on specific migrant groups ('the Moroccans', 'the Muslims', 'the Syrians'). This creates a tendency to deny or ignore the intertwining of diversity, and to see behaviour as typical of specific groups. Such a discourse can unintentionally promote polarisation, and reduce attention for how fragmentation in a super-diverse society can indeed lead to problems due to a combination of circumstances. It is therefore important that we in a super-diverse society also develop a language to understand society and not unintentionally stir up tensions.

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1.1. *Defining superdiversity*

The migration society is just one part of a broader superdiverse society characterized by a high degree of social complexity. *Superdiversity* is a term that is increasingly used in science and beyond to indicate a fundamental change in the nature of migration and diversity and to explain why it has increasingly become a societal issue. The term originates from American anthropology, where Hollinger (1995) was one of the first to describe a post-ethnic America where diversity had become so 'diverse' that traditional ethnic forms of distinction no longer worked. The term itself was first raised by Steven Vertovec (2007), who pointed to the changing nature of diversity in the United Kingdom. In the Netherlands, the term is now used more broadly (such as by Crul and Lelie 2023, Scholten 2025), although the Netherlands Scientific Council for Government Policy (WRR) still opted for the related concept of 'migrationdiversity.'

Roughly speaking, superdiversity refers to three closely interrelated societal changes:

— *The broadening of diversity*. Diversity refers to an ever-increasing part of the population with increasingly different backgrounds. For example, Crul and Lelie (2023) speak of the emergence of majority-minority cities, or cities in which more than half of the population has a first- or second-generation migration background. In what the WRR calls 'new diversity', it also emerges that there are increasingly more different migrant groups; the classic migrant groups make up an increasingly smaller part of the total population with a migration background. Moreover, diversity plays a role in an ever-increasing part of society; it has long ceased to be a metropolitan issue. Diversity therefore affects society in an increasingly broader sense (see appendix A for an overview of the development of the population with a first or second migration background in the Netherlands and in a number of cities).

— *The deepening of diversity*. Diversity itself has become increasingly diverse. Distinctions based on ethnicity or culture and also the distinction between majorities and minorities have increasingly lost their meaning. That is why categorisations from the past such as 'ethnic minorities' or 'allochthones' have also become increasingly problematic. According to Vertovec (2023), diversity is characterised by a high degree of 'social complexity'

in which various backgrounds intersect, such as ethnicity and culture, but also class, education, religion, legal status, lifestyle, political preference, etc. According to Vertovec, the 'new diversity' is precisely about intersectionality, or the way in which within diversity various backgrounds overlap (or not), such as class and ethnicity.

— *The changing nature of mobility*. Migration is no longer simply a linear process in which a migrant leaves a country of origin, embarks on a migration journey, and arrives in a country of settlement and participates, integrates and assimilates there. In science, people increasingly speak of 'mobility' instead of 'migration', or even of 'liquid mobility' which involves an increasing number of different forms of mobility (Engbersen and Snel 2013). It has long been the case that, as in the time of the 'guest workers', there would hardly be any return. Migrants are indeed migrating more and more often, both back to the country of origin and on to another location. In this context, there is often a high degree of uncertainty, both among migrants themselves and in society, about the duration of their stay. Certainly, in a relatively small country like the Netherlands, we see an increasingly high degree of 'fluidity' in society, which is reflected in, among other things, rising emigration figures in addition to rising immigration figures.

1.2. *Superdiversity and policy*

Superdiversity has important implications for policy, policy discourses and legal categories used in policies. This does not only concern migration and diversity policy, or what used to be called integration policy. Superdiversity as a societal issue has implications for policy in a broad sense, across various policy sectors and across various policy levels. In fact, much migration policy is economic policy, and much 'integration policy' is precisely education policy, labour market policy, neighbourhood policy, social policy or housing policy. This is of course at odds with the tendency to portray migration and 'integration' primarily as special and separate policy areas; there is therefore a gap between the political reality and the sociological reality surrounding migration and integration. In this section, I will discuss the diversity of policy models that can be associated with superdiversity. In addition, I will look at how policy can be coordinated in the context of complex societal issues. Finally, I will look at two special issues in the

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context of superdiversity and policy; which idiom do we need to be able to interpret superdiversity, and how can one collaborate with relevant societal groups and movements in superdiversity.

The literature distinguishes between various policy models for dealing with migration-related diversity. These models are still applied in various places under various circumstances. There is an increasing amount of literature that shows how different models relate to superdiversity. In fact, the 'mismatch' between policy model and social reality of diversity is seen as one of the explanations for the often experienced 'crisis mode' in this policy area. The assumptions on which policy is based, such as the nature of mobility or diversity, are then at odds with the social reality in which migration and diversity have become societal issues. This creates a 'crisis feeling' that plays an important role in the social unease surrounding migration and diversity and can unintentionally play an important role in polarisation; 'crisis' puts relationships on edge.

In international and national literature, the following models are distinguished (see, among others, WRR 2020, Scholten 2011, Entzinger 2000, 2006, Koopmans et al. 2005):

— *Laissez faire policy:* in this model, no coordinated policy is pursued with regard to migration and diversity. Dealing with these themes is left to the market and/or society. This policy was dominant in the Netherlands until the 1970s, when it was assumed that migrants would only stay temporarily. Elements of *laissez faire* policy can still be found today, including in the Netherlands; for example, the idea that integration is an individual responsibility of those involved, and/or that integration should actually be left to the market. With regard to superdiversity, *laissez faire* also states that the government should be very reluctant to intervene with regard to specific forms of diversity, because of the risk of not properly understanding the complexity of diversity, or the idea that governments should generally refrain from intervening in the private sphere.

— *Differentialism:* in this model, policy is coordinated, but not aimed at inclusion or integration, but at 'living apart together'. This model is reminiscent of the Dutch pillarization history, where consultation via elites of communities played a key role (Scholten 2011). The beginning of the Dutch multicultural model in the 1980s shows elements of this model. The efforts of migrant parties in Dutch politics also contain elements of

differentialism. The concept of 'polarization' itself also contains aspects of differentialism, because it mainly refers to contrasts between groups or movements.

— *Multiculturalism:* this is a model that has been used and abused a lot in social and political discourse, but scientifically means that migrants emancipate and participate in society from their own community and their own identity. So integration but with preservation of identity. This is the model that is closest to the minority policy of the 1980s (see also Entzinger 2006).
— *Integrationism:* this model is also about integration, as the name suggests, but community and identity do not play a central role. Integration is mainly about how individual migrants participate in the socio-economic sphere, i.e. living, working and knowing. This is the model that the Netherlands applied in the 1990s and is also the basis for the integration policy aimed at equipping migrants to be full citizens. Integrationism shows strong similarities with universalism but focuses much more specifically on migrants who need to integrate.
— *Assimilationism:* in this model, integration has not only a socio-economic but also a socio-cultural meaning. In order to fully participate in society, one must also adopt values and norms and conform to social conventions in society. First adapt, then participate. The Netherlands has incorporated elements of this model since the 00s, for example with elements of knowledge of Dutch society as part of the integration policy.
— *Universalism:* this is a classic model in which dealing with diversity (and migration) is part of a general policy aimed at the entire diverse population (Koopmans et al. 2005, Scholten 2011). So a general policy aimed at reducing disadvantages, promoting language proficiency, developing intercultural skills, etc. Since the end of the 2010s, with the gradual dismantling of the integration policy, Dutch policy has increasingly moved in this direction.
— *Interculturalism:* finally, interculturalism deserves special attention as an increasingly prominent emerging model of diversity policy. Interculturalism focuses on creating the conditions for contact and encounter in society (Zapata-Barrero 2015). It differs from multiculturalism in that it does not focus on the promotion of the individuality of groups, but rather on contact between groups. And it differs from universalism in that it actively focuses on the promotion of contact between migrant communities and the rest of society. Internationally,

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this model is widely used by cities, including in the United Kingdom (London, Birmingham) and Spain (Barcelona).

Superdiversity is not a policy model itself, but a model of societal developments. We can, however, say something about the theoretical fit or misfit between superdiversity and the various models. Where in the Dutch context superdiversity is sometimes confused with multiculturalism, there is no fit between the focus of multiculturalism on specific and clearly defined groups and the focus of superdiversity on complexity and intersectionalities (Scholten et al. 2019). A target group policy aimed at ethnic groups would not fit in a superdiverse context (Vertovec 2023).

Several researchers also argue that superdiversity does not go well with assimilationism. Crul and Lelie (2023) argue that in a context of superdiversity it is no longer clear who should assimilate into what. Precisely because concepts such as majority and minority lose meaning in such a context. Incidentally, integrationism can go well with superdiversity, as long as attention is paid to socio-economic aspects and as long as integration on a socio-cultural level is truly a two-way process in which migrants and non-migrants mutually adapt to each other.

Superdiversity fits best with models such as universalism and interculturalism, which can be applied in various specific contexts. Superdiversity turns migration and diversity into societal issues, for which universalism is a suitable model. It aims to organize migration and diversity for the entire diverse society and across many policy areas. However, universalism runs the risk of paying too little attention to issues of social cohesion, which the literature notes are to be expected for superdiversity. It therefore seems most applicable in metropolitan settings where there is a very high degree of everyday superdiversity (Wessendorf 2010). That is why interculturalism (Abdou and Geddes 2020) is a better model for specific situations where promoting cohesion and contact between groups requires further attention. Here too, we often see that this applies at the urban or neighborhood level.

Table 1.

Institutional fit of policy models with superdiversity

Policy model	Fit with superdiversity
Laissez-Faire policy	— Risks that superdiversity reduces cohesion — Research shows that living together does not happen automatically

Policy model	Fit with superdiversity
Differentialism	— Social complexity of superdiversity makes it unclear on what basis groups should be distinguished; target group policy is impossible — Intersectionalities have become the rule rather than the exception
Multiculturalism	— Social complexity of superdiversity makes it unclear on what basis groups should be distinguished; target group policy is impossible + Attention to how different cultural backgrounds come together
Integrationism	+ Policies aimed at economic participation remain necessary — Socio-cultural dimension of integration less appropriate — Integration must be a two-way process (which is often not the case with integrationism)
Assimilationism	— Unclear who should assimilate into what — Concepts of majority and minority have lost meaning
Universalism	+ Policy aimed at the entire diverse population + Embedding in general policy — Risk of color blindness, where super diversity requires good cultural understanding
Interculturalism	+ Create space for meeting and contact + Focus on local level

2. **The Dutch case: polarization versus superdiversity**

The fact that the Netherlands has become a migration society has been a subject of societal debate for some time now. We have known for more than half a century that the Netherlands is an immigration country, which according to some is not even that new from a historical perspective (Obdeijn and Schrover 2008). However, we are now seeing more and more clearly that the transformation that the Netherlands is going through is not only related to immigration and emigration, but that it is changing society as a whole; it has become a superdiverse society. Migration and migration-related diversity have become societal issues, with important implications not only for migrants but for society. These topics are related to the organization of our economy, the way in which education is provided (think of multilingualism and citizenship education), the organization of public space (building for encounters), for art, culture, sports and so on.

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2.1. *Background of superdiversity in the Netherlands*

How the Netherlands became a superdiverse society is linked to much broader changes in our society (see also Scholten 2020). First of all, *globalization*, or an increasingly deep connection with, and therefore also dependence on, the rest of the world. This is certainly very tangible in a small country with an open economy like the Netherlands. Think of how the war in Palestine or the political struggle within Turkey now often have direct consequences for tension in Dutch society. In addition, a process of *individualization*, in which the individual has become increasingly central almost everywhere in the world, and often even comes to stand above the community. Individualization also changes the process of integration; who actually integrates into what? And finally, the process of *technologization*, in which technology has become increasingly important in our lives, and has also made new forms of mobility, contact and identification possible. Also think of how social media plays a role in spreading potentially polarizing stories about alleged actions of alleged groups, as the recent riots in the United Kingdom show. These three processes together cause an increase in societal complexity, which is characteristic of superdiversity. Superdiverse societies are not necessarily polarized societies, but rather complex societies with a high degree of fragmentation.

The perspective of superdiversity is at odds with more conventional thinking about groups, or 'pigeonholing'. For example, thinking about migration and (migration-related) diversity in the Netherlands is strongly influenced by thinking in terms of ethnic or cultural groups and speaking in terms of majorities and minorities. Almost everyone in the Netherlands will be able to name classic migration groups, such as Surinamese, Antilleans, Moroccans and Turks. Moreover, thinking in terms of minorities resonated with the deep-rooted thinking on religious and cultural pillarization in the Netherlands (Lijphart 1979), and with the need for a target group policy to be able to specifically improve the position of these groups. This is the basis of the Dutch Ethnic Minorities policy, which received a lot of international attention at the end of the last century.

This thinking about the emancipation of minorities later developed into thinking about integration. This led to an integration policy, which specifically focused on fitting into societies of people with a migration background. This policy mainly emphasized the social-economic areas for integration (work, housing, education), but from the 2000s onwards it increasingly also had a socio-cultural approach. Integration

meant that migrants had to become part of Dutch society. This was often described as a two-sided process, but in practice it mostly meant that migrants had to integrate and Dutch society had to help them with this and also had to leave room for integration (Schinkel 2018).

Since the 2000s, this was increasingly targeted in particular at Muslim migrants in the Netherlands. Increasingly, public and political debate on integration became conflated with debate on Islam (Obdeijn and Schrover 2008). In 2002, the Pim Fortuyn Party became part of a government coalition, on a political party program that focused on the struggle 'against the islamisation of society.' Also for the Freedom Party of Geert Wilders, the integration debate was in particular about 'protecting' Dutch society from the influences of Islam. This is also manifested in policy proposals suggested by the Freedom Party (currently the largest party in the Netherlands) against any form of muslim immigration, but also for putting fines on owning a Quran or entering a mosque. These plans never made it into policy, but are still part of the Freedom Party's official party program.

Thinking in terms of oppositions between groups is not only a common thread between thinking about minorities, integration and Islam in particular, but also with the terminology of 'polarization'. Polarization assumes increasing oppositions between groups that are generally recognizable and well demarcated. In a complex and superdiverse society, this is, despite the undiminished symbolic significance of specific identities, often much less the case. This does not mean that there are no oppositions and conflicts in a superdiverse society; however, these are better described as fragmentation than as polarization.

Finally, superdiversity does not manifest itself in the same way everywhere; there is no single superdiverse model. As Engbersen and Scholten (2018) and the WRR (2020) show, superdiversity can manifest itself in very different ways in different cities or even in different neighbourhoods. In a post-industrial city like Rotterdam, the various diversities such as class, ethnicity and residence status come together in a very different way than in a middle-class city like Hilversum. There are very different types of urban diversity configurations. Superdiversity therefore brings a high degree of complexity.

2.2. *Societal implications of superdiversity*

The literature on the implications of superdiversity is still developing and far from unambiguous. However, a broad picture is already

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emerging, including the implications for migrants themselves, for cohesion in society, and (part of the next section) for policy.

If we look at the migrant himself, superdiversity places the position of migrants much more in the perspective of individualisation. Migrants are no longer approached as members of a specific group or community (not only by policy but also by society). On the one hand, this does justice to the often very versatile and multiple ways in which people identify themselves. For someone of the second or third generation of Moroccan migrants in the Netherlands, the Moroccan identity may still be important to a certain extent and especially in certain contexts. But this also applies to many other aspects of one's own identity. For example, research shows that young people of a Moroccan or Turkish background increasingly identify locally rather than with their country of origin or settlement (Entzinger and Dourleijn 2008). Emphasising multiple identities prevents migrants from being locked up in their community through an 'ethnic lens', as it were, and from having their ethnic identity imposed on them as dominant outside of their own choice.

On the other hand, this superdiverse approach to identities is at odds with the still (and perhaps increasingly) important role that ethnic and religious identities in particular play in the social debate. In everyday racism, apart from the sociological analysis of identity formation, more visible and simple forms of diversity are emphasized, such as color and religion. And even apart from racism, ethnic identity is still important to many migrants, which is certainly possible within the image of superdiversity. Superdiversity does not mean that groups or communities would or could no longer play a role, but it does put an end to the assumption that diversity can always be captured in terms of clearly defined groups. This also does not mean that ethnicity and religious diversity cannot play an important symbolic role in social polarization; superdiversity does offer a perspective to deconstruct this symbolism and to understand the broader social background of polarization. For example, how ethnic polarization, such as in the banlieues of Paris, often in fact reflected the increased socio-economic inequality in such neighborhoods, or the inequality in access to good public services, housing and education. Researchers on the rise of political support for anti-migrant parties also show that such support is often related to fear of globalization, and the feeling that individualization makes certain people less able to rely on the community.

Superdiversity also has various broader implications for society. The WRR (2020) shows, based on broader research, that superdiverse neighbourhoods are generally associated with a lower degree of

cohesion. For example, in superdiverse neighbourhoods one sees what the WRR describes as 'feelings of loss', the longing for cohesion from the past. One also sees a lower sense of safety (which is not the same as actually lower safety) and a lower sense of home. According to the WRR, the concept of 'public familiarity' plays an important role in this; it is not so much about a lot going wrong, it is about a feeling of less familiarity with the neighbourhood. In addition, Van der Meer and Tolsma (2014) show that an increase in diversity is also associated with a decrease in social capital; so the more superdiverse a neighbourhood, the less social capital.

Recent research by Crul and Lelie (2023) offers a somewhat more specific picture. They show that, especially among the somewhat higher educated population, there are somewhat more positive views on diversity, and that it also matters a lot how diversity was discussed in one's own family and what experience one had with diversity at a young age at school. They also see that people with a negative view on diversity often also experience a high degree of distance from policy and politics; it is therefore related to broader dissatisfaction.

Both the WRR (2020) and Crul and Lelie (2023) show that living together in a superdiverse context does not happen automatically. Superdiversity is a de facto transformation in our society but is certainly not always 'super' in the sense that it is all without challenges. Researchers disagree to what extent this has only to do with migration and diversity themselves. Vertovec (2023) argues that superdiversity and declining social cohesion are a manifestation of two much broader societal transformations: individualization and globalization. People move much more loosely from communities and social structures and over greater distances than before, which causes the traditional cohesion within more homogeneous communities to decline. According to Vertovec, dealing with superdiversity is actually about dealing with social complexity in a broader sense; certain parts of the population are better at dealing with this, and also benefit more from it, than others.

Finally, there is emerging research showing temporal effects in attitudes towards superdiversity; it shows that over time people seem to get used to superdiversity (Vertovec 2019). In fact, research on voter behaviour in Rotterdam has shown that acceptance of diversity seems to increase in neighbourhoods in the city centre with a long tradition of diversity, while resistance to superdiversity seems to increase in neighbourhoods more on the outskirts where diversification is more recent. In this way, acceptance of diversity

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would radiate like a 'halo' to the suburbs. This somewhat resonates findings from other research showing that voters for populist parties such as the Freedom Party (initially) mainly came from regions with relatively few migrants (Harteveld et al. 2022). Although more research on this halo effect is needed, the initial findings may have important implications for how we might understand the increased resistance to diversification in the Netherlands. It would offer a perspective in which superdiversity increasingly becomes normal in an increasing number of neighbourhoods and cities in the Netherlands, and attention will shift to those areas (suburbs, medium-sized cities) where dealing with diversity has only recently received attention.

3. **Superdiversity as a new perspective for policy and categorisations**

The Dutch case helps understand how superdiversity challenges policy models and policy categories. It shows how conventional ways of perceiving diversity contribute to sensations of crisis and polarization, whereas the social complexity of superdiversity is especially manifested in intersectionalities and multiple overlapping 'fragmentations' in often strongly contextualized ways. There is no 'one size fits all.' Actually, not fitting a situation, or forcibly imposing a policy model, can reinforce the 'crisis' feeling that plays such an important role in social discontent and polarization in this area. Developing the superdiversity perspective further, based on the Dutch case, several important analytical contributions can be made on how to respond to superdiversity in a way that does not produce such crisis sensation. This includes how policies are coordinated, how policy categorisations are used, and how policy engagement or forms of cooperations are shaped.

3.1. *Policy complexity and superdiversity: Horizontal and vertical policy coordination*

Positioning superdiversity in the world of policy models does not say everything about 'how' this policy should be developed and implemented. Precisely because different policy models can be applied in different situations of superdiversity, the coordination of policy is important.

Horizontal policy coordination is of great importance, precisely to ensure that superdiversity as a societal issue actually receives the attention it needs across various policy areas. In the literature on public administration, this is also called mainstreaming (Scholten 2020), as it is also applied to gender mainstreaming and climate mainstreaming. Various studies show that, for example, education is a core sector when it comes to dealing with migration-related diversity. In the Netherlands, for example, consider citizenship education, in which dealing with diversity is increasingly seen as a so-called '21st century skill' is being developed. But also consider, for example, the discussion on the internationalisation of higher education, or migration-related discussions in the field of housing and the labour market. Access to the labour market is still an important condition for inclusion (WRR 2020). The same applies to access to affordable housing, but also to housing planning that promotes rather than discourages encounters and contact between groups.

Dealing with migration-related diversity can therefore no longer be a policy silo. That would also give the impression that it is not a societal theme, but a problem specific to migrants. This also applies to migration policy, where there is still much less mainstreaming. In fact, migration is determined to a very large extent by a country's economic policy, and to some extent also by social and labour market policy. What we now call migration policy is in fact only the final link in a chain of migration management, and often too late or too limitedly effective to have much influence.

However, the instruments for horizontal policy coordination are very limited. In the Netherlands, there is no structure or culture for horizontal policy coordination, which makes the mainstreaming of superdiversity extremely complex or difficult. Knowledge and information, as produced by the Social and Cultural Planning Office, traditionally play an important role as a coordination instrument; figures show to what extent the social position of migrants in specific sectors requires further attention. But here the problem is increasingly occurring that diversity is increasingly difficult to capture in clearly defined groups. In addition to knowledge, political-administrative leadership is an important instrument for horizontal coordination. It would be good not to isolate the responsibility for migration and diversity in a separate portfolio (so no superdiversity minister or alderman), but to make it part of a broad dossier of someone with authority over multiple portfolios. Think of how integration was previously assigned to a deputy prime minister, or how in many cities the mayor plays a central role in keeping a vision on diversity together. In Rotterdam, the horizontal coordination of policy is also being

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promoted by means of a city marine on discrimination, who must work across various policy areas and levels.

In addition to horizontal coordination, *vertical policy coordination* in superdiversity requires special attention. We see that studies clearly point in the direction of local government as the appropriate level for policy aimed at superdiversity. Precisely because superdiversity is not a 'one size fits all', customisation at city or even district level must provide a solution. This coherence at district and city level is experienced as much more important than coherence at, for example, national level (WRR 2020). That is why researchers have long been talking about a 'local turn' in policy and diversity (Engbersen and Scholten 2018, Zapata et al. 2017), which represents an important trend break in the long, mainly national history of policy in this area. We also see this very clearly in the Netherlands, where not only large cities such as Amsterdam, Rotterdam, Utrecht and The Hague, but also medium-sized municipalities such as Eindhoven, Enschede, Leeuwarden and Tilburg are very emphatically manifesting themselves with their own unique approach in the area of migration and diversity. Think of the specific approach to expats and highly educated migration in Eindhoven or the strong emphasis on disadvantaged policy in cities such as Enschede and Leeuwarden.

An important development in this context is also the shift of emphasis to district level or city district level. There are many examples of integral approaches at sub-city level in which migration, diversity and polarisation/fragmentation are placed in a broader perspective on district development. Think of the national programmes for Rotterdam South, The Hague South West, or Amsterdam New West. Such programmes hold the promise of more customisation in which superdiversity is a subject but is not presented as a central problem. Moreover, such programmes bring together the most important actors, both 'vertically' and 'horizontally'.

It is therefore important to look closely at how policy is coordinated in complex societal issues such as superdiversity. We know from research that policy coordination that goes horizontally across policy sectors and vertically across policy layers often functions with difficulty. The national programmes are a very promising form of integrated working at sub-urban level.

3.2. *Categorisations and policies; towards a plural idiom for superdiversity*

Another important aspect of superdiversity and policy concerns the use of social categorisations, in policy as well as in legal contexts. We

know from the literature that the way in which affected groups are described can have important implications, for policy as well as for affected groups themselves (Ingram et al. 2019). Language is not neutral. And it is precisely on this subject that a number of important changes have already occurred in the Netherlands in recent years.

Until the 1970s, the term migrant or immigrant was carefully avoided, because it would create the illusion that migrants would stay. The intention at that time was not for the Netherlands to become an immigration society. That is why people spoke of 'guest workers' or even of 'international commuters', to emphasise the temporary nature. Moluccans were also defined on the basis of their ethnicity, to prevent their Dutchness from being emphasised. The term 'repatriates' was often used with regard to migrants from the former Dutch East Indies, even when it concerned 'Dutchmen' who had lived in the East for generations, or even Indonesians who had never been to the Netherlands but had worked with the Dutch. It is clear that even at this time, the idiom with regard to migrants was mainly dictated by the policy perspective. This was at odds with a reality in which many guest workers showed signs of settling, and Moluccans had sometimes been in the Netherlands for decades.

The idiom of ethnic and cultural minorities that was used in the 1980s also mainly arose from the policy perspective that prevailed at the time. Minority policy benefited from the construction of clearly demarcated groups, and these groups sometimes responded to this by developing their own organisations. This was, even in the 1980s, at odds with the high degree of diversification within the groups (think of the large differences between Moroccans from different regions, or the large political and religious differences in the Turkish community).

In the 1990s, with the strong rise of individualism in Dutch society, a more individualistic idiom for migrants emerged; 'allochtonen', or literally 'not from here'. Just like minorities, the concept of allochtoon also became part of the social discourse of speaking about migrants. It did reduce the emphasis on communities, but it did increase the emphasis on the otherness of migrants. This in turn was at odds with the rapidly advancing diversification of those years, especially when it came to second and third generation 'migrants' who were born in the Netherlands and in most cases had by then also simply had Dutch citizenship.

Once again, the Scientific Council for Government Policy played a very important role in rethinking the idiom for migration and diversity. In 2016, a special working group issued an authoritative recommendation

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advising to no longer use the term allochthon, and instead to speak of Dutch people with or without a migration background (2016). The stigmatizing effect of the term 'allochthon' was one of the motivations cited in the report. With the new designation, the Netherlands is conforming to a categorisation that is already used in a number of neighboring countries, such as Germany, where people speak of Germans *'mit oder ohne migrationshintergrund'*. It is also important that the Netherlands continues to distinguish itself from a country like France, where migration background is not considered at all, but only place of birth; what is relevant is whether or not someone was born in France. Second or third generations are not monitored at all in France; after all, they have not migrated either.

WRR advice from 2016 for superdiversity has received little attention, and no follow-up in policy. In the report, the WRR advocates a 'multiple idiom' in which migration background would be relevant or not depending on the situation. This is an important change in starting point, especially in a situation of social complexity where there is often a tangle of intersectionalities, for example between class and religion, or ethnicity and residence status. In the literature on public administration, this is also called the use of 'proxies' (Scholten 2020). Instead of starting with someone's ethnic status or migration background and looking at what goes right or wrong, one starts with an actual problem situation and then looks at who is affected and for what reasons.

A multiple idiom is therefore mainly driven by specific problems or needs; 'problem or needs-based'. In such a multiple idiom, it can be important for specific problem situations, such as racism, to map someone's ethnic origin, colour and migration background across multiple generations. But in the case of unemployment or educational achievements, for example, it may be important to look at completely different factors, such as class, parents' level of education, quality of education, and so on. In addition to important practical reasons, this also has an important ethical motive; by not starting from someone's migration background, it is prevented that this migration background is almost automatically problematised.

Paying attention to precision in idiom is also important with a view to preventing (unintentional or intentional) reinforcement of polarization and discomfort. Language is important for the 'framing' of a situation and can intensify a situation. Even in very thorny incidents such as the defacing of synagogues or mosques, there can be a tendency in politics and the media to frame the same terms of groups that are opposed to each other. This can happen, but it can

also be the case that there is more incidental vandalism or mischievous behavior. This does not detract from the seriousness of the situation, but it does ensure precision and prevent unnecessary implications. Social media, as stated earlier, also play an important role in this. The recent riots in the United Kingdom are an important example of how careless wording of a situation, and the uncontrolled dissemination of 'alternative facts' via social media, can let a situation get completely out of hand.

Furthermore, an important constitutional note on the use of migration idiom is that in the Netherlands data on migrants are not collected on the basis of self-reporting, but on the basis of data from official state registers. This is a very important difference with countries such as the United Kingdom and the United States where data are collected on the basis of a census. In the UK, if someone reports that he or she belongs to a specific ethnic community, then that is the personal choice of the person concerned. In countries such as the Netherlands and Germany, it is the government that determines whether someone is classified as a migrant based on the person's place of birth and their parents. Certainly in the context of superdiversity, this can have major consequences for the interpretation of data in the Netherlands, such as the figures that the Social and Cultural Planning Office regularly publishes on various migrant groups in the Netherlands. Behind these figures lies the assumption that, for example, when figures are published on the average unemployment among Moroccans, one is talking about an actually existing group.

3.3. *Collaborating in superdiversity*

Superdiversity and the multiple idioms we need to interpret superdiversity also have implications for the way in which we collaborate with social groups and movements. As noted earlier, the Netherlands has a strong tradition of consultation with relevant groups and their organisations, based on a deeply embedded history of pillarisation. This was the case, for example, in the strongly institutionalised consultation that was known in the Netherlands with minority organisations, the National Consultation of Minorities (disbanded in 2015). In the LOM, central consultation took place with organisations of Surinamese, Turks and Moroccans, for example. The Contact Body for Muslims and Government is another, still existing, example of a body intended for central consultation with specific groups.

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On the one hand, a superdiversity perspective questions collaboration with group-specific organizations. An argument that superdiversity researchers often use is that exclusive collaboration with such organizations can unintentionally reinforce an 'ethnic lens' or 'religious lens', thus problematizing ethnicity and religion (Vertovec 2023). Not because ethnicity or religion do not play a role, but because they are often not the only factors. Such an ethnic lens can actually hinder the view of superdiversity as a societal issue. In addition, questions are often raised about the demarcation of such ethnic or religious organizations; to what extent are they representative of their supposed constituency.

On the other hand, it is of great importance to note that from the perspective of superdiversity, one can indeed cooperate with ethnic or religious organisations, but that the criticism is expressed in exclusive cooperation. Research shows that criticism of the role of ethnic organisations has often led to a complete cessation of cooperation with such organisations; such as the dissolution of the LOM. Instead, policies aimed at societal issues should promote cooperation with organisations along a broad spectrum of societal categories, including but not limited to ethnic or religious organisations. So a broader cooperation with, for example, neighbourhood organisations, youth organisations, social organisations / NGOs, sports institutions and cultural institutions, etc.

Again, reference can be made here to the national programmes for specific urban areas, such as The Hague South West, where such a more integral cooperation with a large range of organisations is indeed getting off the ground. One can argue that such programmes are the successor to more centrally coordinated consultations with specific groups.

An important point of attention here, and an important criticism in the literature, is that superdiversity can unintentionally lead to a blind spot for the importance of specific forms of inequality. Racism is an important example of a subject that can easily fade into the background when superdiversity is confused with colour blindness. It is therefore good that specific anti-discrimination organisations (and agencies) are also increasingly being found in broader social initiatives where racism can play a role, such as in neighbourhood policy. Finding connections with new and still relatively limited organised groups, categories or interests can also be a point of attention and concern. Think of how with the arrival of relatively new and unknown migrant groups there is often a bridging period until these groups are sufficiently involved, such as with Ukrainian migration and with the Syrians a few years ago.

Conclusions

Dutch cities have become superdiverse. This development is the subject of fierce social debate, but it is an undeniable social fact; it is there, whether people like it or not. However, it has important implications for how policy is made in a superdiverse society, what policy categories and legal categories are used, with whom this policy is made, how the policy is coordinated and how people talk about the policy.

This article shows that discourses on crisis and polarization in Dutch societies can be better understood as misinterpretations of social complexity in policy discourses, policy categories and policy coordination, than as actual tensions between clearly demarcated groups. It develops a superdiversity perspective on policies that also has important implications for politics, public debate and legal processes in the area of migration. A superdiverse society is characterized by a high degree of fragmentation, especially as a result of the much broader processes of globalization, individualization and technologization. Migration and diversity have come to symbolize discomfort with these processes. And as a result of these processes, old forms of connection have been lost, which is accompanied by feelings of loss. This requires attention. But it also requires a realistic approach to superdiversity; policies that deny or ignore societal complexity can only contribute further to discomfort and to a sense that policy is in 'crisis'.

Based on the (rapidly developing) literature on superdiversity, a number of central propositions can be derived:

— Migration and diversity are societal issues and require a whole-society approach. Migration and diversity policy are general policy and should not be seen separately from, for example, education policy, labor market policy, housing policy, etc.
— In a superdiverse society, there is often no polarization between groups, but fragmentation along a great diversity of dividing lines; socio-economic status, color, education level, background, status, ethnicity, etc.
— Superdiversity challenges conventional policy categorisations and legal categorisations. Too rigid categorisation of groups can inadvertently promote polarization and fuel discomfort.
— There is no one-size-fits-all for policy and superdiversity; dealing with superdiversity requires customization and flexibility.
— Dealing well with superdiversity requires policy that cuts across policy sectors and administrative levels, and that adequately

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connects with a broad range of social organizations. It requires a form of 'network governance', with the right instruments and leadership.

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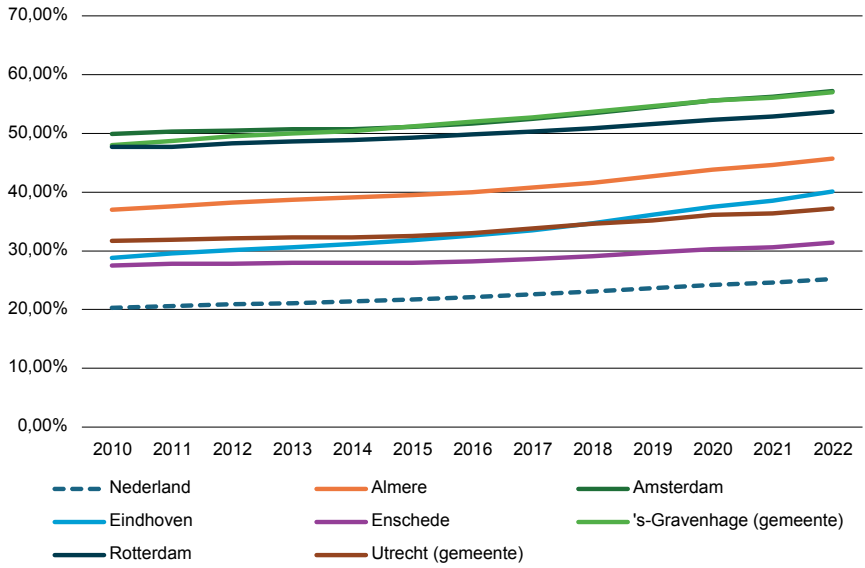
Appendix A.

Development of the population with a first or second generation migration background in the Netherlands and in a number of cities



Source: CBS Statline.

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[1]

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 concordatarian 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

[1] 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-100), 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

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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

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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

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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.

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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

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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 "catolicocentric" spatial order that produces territorially uneven access to Islamic burial (Salguero 2023; Gil-Benumeya 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.

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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

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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, Manzanas 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)[2]

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

[2] *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?pageId=10#caseId=985

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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)[3]

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)[4]

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

[3] *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?pageId=10#caseId=684

[4] *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

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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)[5]

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

[5] 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)[6]

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

[6] *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

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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)[7]

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

[7] *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.[8] 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

[8] 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.

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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)[9]

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

[9] *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 Baleares 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

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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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Bridging religious difference in an Autonomous Region: cultural mediators and the promise of transcultural capital

Superando diferencias religiosas en una Región Autónoma: mediadores culturales y la promesa de la capital transcultural

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Summary: Introduction. 1. Diversity governance: expanding thinking on cultural mediators through the lens of transcultural capital. 1.1. Cultural mediators in diversity governance. 1.2. Transcultural capital and new religious minorities. 2. Governing religious diversity in Italy through cultural mediators. 2.1. Legal frameworks for religious diversity. 2.2. Laws and policies around cultural mediators in Italy. 3. Diversity governance towards religious minorities in South Tyrol. 3.1. New religious minorities in South Tyrol. 3.2. Implementing policies for cultural mediators in South Tyrol. 3.3. The impact of the law on integration as part of diversity governance. Conclusions. References.

Abstract: This research contributes to the discussion of how diversity governance is dealing with demands to accommodate the increasing religious diversity born of recent migration flows. As part of the toolkit for managing religious diversity at the regional level, cultural mediators are seen as contributing to the sincere and real inclusion of religious minority perspectives, reducing tensions and assisting new religious minorities to overcome barriers. Using the case of South Tyrol in Italy, I explore how national and regional diversity governance have developed policies to establish the figure of cultural mediator as part of supporting meaningful participation in pluralist societies. I

argue that this role is further enhanced in diversity governance with policies that promote members of new religious minorities as cultural mediators, valorizing their transcultural capital. This case shows how regions with political autonomy can adapt and expand national policies to address religious diversities.

Keywords: Religious minorities, cultural mediators, diversity management, intercultural awareness, migrants.

Resumen: Esta investigación contribuye a la discusión sobre cómo la gobernanza de la diversidad está respondiendo a las demandas de acomodar la creciente diversidad religiosa derivada de los recientes flujos migratorios mediante el uso de mediadores culturales. Como parte del conjunto de herramientas para gestionar la diversidad religiosa a nivel regional, se considera que los mediadores culturales contribuyen a la inclusión sincera y real de las perspectivas de las minorías religiosas, reduciendo tensiones y ayudando a las nuevas minorías religiosas a superar barreras. Utilizando el caso del Tirol del Sur en Italia, muestro cómo la gobernanza de la diversidad, tanto nacional como regional, ha desarrollado políticas para establecer la figura del mediador cultural como parte del apoyo a la participación significativa en sociedades pluralistas. Sostengo que este papel se ve aún más reforzado en la gobernanza de la diversidad a través de políticas que promueven a las nuevas minorías religiosas como mediadores culturales, valorizando su capital transcultural. Este caso muestra cómo la legislación regional puede adaptar y ampliar las políticas nacionales para abordar mejor las diversidades religiosas.

Palabras clave: Minorías religiosas, mediadores culturales, gestión de la diversidad, conciencia intercultural, migrantes.

Introduction[1]

Recent migration flows have led to various challenges related to cultural and religious differences that often impact new religious minorities, adherents of traditional faiths who find themselves in a new territory (Bretscher 2017). New religious minorities may need additional guidance in navigating the often-confusing landscape for legal protection of human rights and religious diversity (Ruiz Vieytez 2024). Moreover, claims for recognition on the basis of new religious identities may impact the preservation of social cohesion and unity in interactions with both the majority and historical minority religious groups (Medda-Windischer et al. 2024). Meanwhile, various transnational dynamics have encouraged new religious minorities to develop hybrid forms of belonging, yet these are "actively shaped by both constraints and opportunities within receiving societies" (Ruiz Andrés and Sajir 2025, 3). Thus, increasing religious diversity has placed pressure on diversity governance to devise innovative ways to mediate across diverse contexts and cultures and build opportunities for peacefully navigating religious difference. Various intermediary actors with advocacy experience, local expertise, or legal knowledge are gaining prominence for assisting new religious minorities as part of diversity governance (Budabin and Nardocci Forthcoming; Griera et al. 2019; Griera and Forteza 2011). Of particular relevance are cultural mediators who may be uniquely situated to understand the different contexts and assist with migrant integration and minority protections.

This article looks closely at the policies and practices surrounding the figure of cultural mediators, who can be considered key actors in diversity governance able to bridge religious difference. The work of cultural mediation is understood to have a normative agenda, "favouring constructive convivence among persons, promoting mutual learning and negotiating differences, rather than imposing an alleged homogeneity or indulging in assimilatory attempts" (Avolio et al. 2023, 123). Cultural mediators are regarded as third party actors who may modify a conflict situation in ways that build "intercultural understanding and positive coexistence" (Busch 2023). In addition to benefiting from the services of cultural mediators, members of new religious minorities may also able to contribute to this diversity governance when they work as cultural mediators themselves, as part of

[1] The author wishes to thank Roberta Medda-Windischer, Andrea Carla, Michael Luther, Zakaria Sajir, and Anna Wolf for research assistance and constructive feedback that contributed to the development of this article.

policies and practices that valorize their transcultural capital (Meinholf and Triafylladou 2006). Overall, this inquiry is organized around two research questions: how has the role of cultural mediators been expanded in diversity governance, particularly with regard to religious diversity? Second, to what extent is the role of cultural mediators enhanced when members of new religious minorities are engaged?

As part of this special issue on "Religions, diversities and human rights: Public policies for democratic coexistence", the piece will adopt a socio-legal approach to contextualize the policies and practices of cultural mediators as part of diversity governance around migrant integration and minority protection. I use the case of South Tyrol in Italy to show how national and regional diversity governance situate the figure of cultural mediator as part of the one word for not only advancing integration but also including minority perspectives. Examining both national and regional frameworks for cultural mediation demonstrates how local contexts are expanding upon national policies in innovative and effective ways (Karanikola and Panagiotopoulos 2025). Further, I use the concept of transcultural capital to interpret these legal and policy frameworks to detect when and how people of migrant background themselves, often members of new religious minorities, are encouraged to take up the role of cultural mediators. I argue that this role is further enhanced when cultural mediators are themselves members of new religious minorities, who may therefore be considered decisive figures in reducing tensions in everyday spaces, helping religious minorities overcome barriers that may often lead directly and indirectly to discrimination.

Drawing from research on religious diversity, cultural mediators and diversity governance, I examine developments related to cultural mediation through the case of the subnational region of South Tyrol, a province in Italy. The country of Italy, which has only recently become a country of immigration, has been challenged in recognizing the new cultural and religious diversity. The country is characterized by a majority religion and has implemented various diversity governance policies around religious minorities as part of legislation related to migration where cultural mediators have been seen as critical for facilitating migrant integration (Karanikola and Panagiotopoulos 2025). Historically, South Tyrol is known for having successfully settled a minority conflict and is considered a model for dealing with ethnic tensions. Like many regions in Italy, South Tyrol is experiencing increasing diversity due to recent migration; in 2024, around 10% of the population was foreign born and religious diversity has increased in the predominantly Catholic region (Volgger et al. 2024). As an autonomous province whose power

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exceed those of other Italian provinces and regions, South Tyrol was the first province in Italy to enact legislation on cultural mediators, making it a model for other subnational policy-makers in devising diversity and integration policies related to building social cohesion while also offering a contrast to policies at the national level.

The article takes the following form. First, I discuss how this research builds upon the literature on diversity governance related to religious diversity by deepening work on cultural mediators through the concept of transcultural capital. Then I offer a brief review of the national context for religious minorities, immigration, and religious diversity in Italy as well as relevant policies and legislation before turning to the South Tyrolian context. To assess Italy and South Tyrol's approaches to religious minorities through cultural mediation, I identify not only legislation and policies related to religion but also policies that deal with the integration of minorities and recognition of increasing cultural and religious pluralism. The data sources include legal texts, reports, websites, and national and regional guidelines.[2] Finally, I share insights on the regional landscape for cultural mediators, drawn from the organizational profile a long-standing cultural mediation operator and background conversations with people who have been working in and studying diversity management in South Tyrol for over two decades. I conclude with a reflection on how the policies and practices of cultural mediation in South Tyrol and Italy have come to valorize transcultural capital and how this approach enhances diversity governance in relation to processes of migrant integration and minority protection.

1. Diversity governance: expanding thinking on cultural mediators through the lens of transcultural capital

This article reaches across sociology, legal studies, and social work to situate the role of cultural mediators in the policies and practice of religious diversity governance. The need to mediate across diverse religious backgrounds has become more urgent in light of increased diversity, in large part due to new religious minorities who arrived through recent migration movements (Medda-Windischer 2008). New religious minorities may be adherents of traditional faiths —Sikh or Islam— but find themselves in a new territory (Bretscher 2017). Despite the expansion of religious protections and policies to manage religious

[2] The author takes responsibility for translations from German and Italian.

diversity, members of new religious minorities continue to contend with discrimination and exclusion (S. Ferrari 2024; Medda Windischer et al. 2024). As part of responding to repression and suppression, cultural mediators are key figures who help work towards the harmonious coexistence of people and groups from different religious backgrounds. Work on cultural mediators in diversity governance is related to the study of interreligious actors, where many innovative transformations are seen to be taking place at the local level (Griera et al. 2019). This section reviews scholarship on cultural mediators in diversity governance and expands this literature by incorporating findings and insights from studies on transcultural capital.

1.1. *Cultural mediators in diversity governance*

Research on cultural mediation has moved from anthropology and the interaction between different cultures to the study of the role of cultural mediators in diversity governance as figures able to foster democratic coexistence amid religious diversity, particularly at the regional level. Part of this research has centered on the principle of dialogue among different parties and its value, "how we communicate across cultural and identity differences in a way that does not deny or avoid those differences" (Sealy 2025, 73). Recent work within diversity governance discussions related to post-secularism has underscored the need to adopt a transnational lens on the diversity stemming from contemporary migration and has opened up the possibilities for new hybrid forms of identity and belonging, which are actively negotiated "through everyday interactions, political discourse, and institutional settings" (Ruiz Andrés and Sajir 2025, 3).

The figure of cultural mediator is traditionally defined by their positionality within a liminal space between two or more cultures. Such figures are therefore known for "turning in two directions at once, becoming specialists in mediating the interests and expectations of both sides and thus facilitating the social integration of complex societies on different levels" (Dietze 2018, 494). They have risen in prominence in the last few decades amid increasing transregionalism and transnationalism. Dietze (2018, 494 and 495) has tracked the emergence of a "new social function" of figures such as religious leaders, teachers, and community leaders who broker "relations between the nation-state and the local community". More than a direct linguistic translation, the public service linguistic-cultural meditator "performs tasks of coordination, mediation, or negotiation

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of cultural and social meanings" (Casadevante 2023, 106-107). Further, there is the expectation that cultural mediators will be familiar with and able to interpret "the cultural markers of the two cultures in contact" and "detect the assumptions and stereotypes that one community has of the other" (de Casadevante 2023 referring to Valero Garces 2016, 106-107). Cultural mediators are now seen in contexts such as healthcare, education, prisons, and other public services.

The essential contribution of cultural mediators has been widely examined at the local-municipal level, especially in cities with high migrant populations (Molli 2025). One investigation into Germany and its culturally heterogenous environment revealed tensions with the Muslim population thereby "making the intervention of linguistic-cultural professionals necessary to mediate and try to resolve or prevent" conflict (de Casadevante 2023, 105). In such settings, cultural mediators "must be familiar with the social, cultural, and religious contexts involved" (de Casadevante 2023, 107). Cultural mediators are seen to help manage the impacts that religious difference may pose in everyday encounters, where "the religious factor sometimes leads to situations of rejection, misunderstandings or the appearance of barriers in communication" (de Casadevante 2023, 105).

As with any diversity governance practice, cultural mediation is affected by both constraints and opportunities (Ruiz Andrés and Sajir 2025, 3). It will first be important to consider the legal and policy frameworks around cultural mediation, which may also contrast across national and regional contexts (Karanikola and Panagiotopoulos 2025). As described above, many adaptations and innovations are occurring in subnational or urban settings. Second, there are salient critiques that point to ways in which practices of cultural mediation related to religious diversity can be improved, particularly when thinking about the profile of the cultural mediator. This is because, as Sealy (2025: 74) reminds us, "the contexts in which dialogues occur are ones marked by power relations". To the extent to which members of new religious minorities can enhance the field of cultural mediation as mediators themselves to respond to power inequalities, I turn to the ways in which their transcultural capital may be elevated in religious diversity governance.

1.2. *Transcultural capital and new religious minorities*

This article argues that cultural mediators can be seen as key actors in diversity governance especially when in possession of transcultural capital. Transcultural capital has been identified as a crucial resource

enabling migrants to leverage their fluency across multiple cultural contexts. Adapting field theory on Bourdieu's taxonomy of economic, cultural and social capital, Meinhof and Trianfyllidou introduced transcultural capital as a way to understand the strategic resources of diaspora groups connected to their knowledge, skills and networks across host and home countries. Transcultural capital encompasses economic, social and cultural capital but it is the cultural capital that recognizes a migrant's multiple languages and multiculturalism. The concept was originally used to discuss the ways in which migrant activists themselves promote their transcultural qualities as transcultural capital, in an empowering process that seeks to turn a disadvantaged position into an asset (Triandafyllidou 2008). Interestingly, the use of transcultural instead of transnational speaks to the possibilities for migrants to become acquainted with cultures and customs beyond those of their nationality.

Transcultural capital is becoming recognized as a critical resource in diversity governance at regional and local levels as part of policymaking, urban planning, and adaptation of public services. Recent scholarship has applied the concept of transcultural capital to specific subgroups of migrants, such as youth, while also elaborating on the ways in which this capital can be accessed and mobilized for the benefit of both migrants and the communities to which they belong. Arias et al. (2022, 755) see transcultural capital as offering an agentic, transformative potential, as a challenge to what they see as 'deficit' models of cultural and ethnic difference. Further, the authors see transcultural capital as a means "to resist social marginalization and cultural oppression" (Arias et al. 2022, 756). Connecting this concept to debates on post-secularity, Sajir (2025) argued that transcultural capital enables us to highlight the agency of Muslim migrant descendants in mediating between secular and religious domains to actively shape their multicultural environments. He pushes us to think of transcultural capital as a societal asset that can be seen as part of diversity governance, "as an active mechanism of social transformation in the governance of religious and cultural diversity" (Sajir 2025, 326). These applications of the concept reinforce its usefulness in analyzing the positive role of migrants in diversity governance.

Here I apply the concept of transcultural capital to policies and practices that encourage the engagement of migrants or members of new religious minorities as cultural mediators. This transcultural element lends itself quite well to the work of cultural mediators in addressing religious diversity; while religious practices may differ across national contexts, familiarity with minority religions still can be

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considered an asset. The profile of the cultural mediator has already been distinguished by cultural expertise born of a professional background from those cultural mediators who possess other nonprofessional expertise that may come from being a lay person or member of the cultural group (Cavallari 2023, 51). Within societies with growing diversity in light of migration, cultural mediators who are themselves migrants and share the same cultural background have been shown to "understand very well the needs of their clients and the obstacles they have to overcome" relying on "their own experience in adapting to the host country" (Minervino and Calvo 2007, 195). Policies and practices that advance the engagement of new religious minorities and migrants may avoid the reinforcement of eurocentricism and instead seek to bridge "localised understandings with transnational realities" (Ruiz Andrés and Sajir 2025, 4-5). The combination of migrants' cultural capital, rooted in multilingualism and multiculturalism, together with their familiarity with minority religions across different national contexts (though not necessarily in the host country), constitutes a strategic resource for diversity governance. However, there are some risks; cultural mediators may be "marginalized by their own communities" due to perceptions of betrayal or taking sides (Minervino and Calvo 2007, 196).

These insights lay the foundation for thinking of why and how the possession of transcultural capital may enhance cultural mediation. In the next section, I investigate a case of how regional institutions implement the role of cultural mediators as part of managing religious diversity and examine the extent to which transcultural capital is valorized. This work will help us in thinking about the legal structures and institutional conditions that support the engagement of members of new religious minorities as cultural mediators.

2. **Governing religious diversity in Italy through cultural mediators**

The case of South Tyrol in Italy offers a useful case to investigate the national policies for cultural mediators and as well as adaption of these policies and practices at the subnational level. Religious diversity in Italy has been increasing as part of the country's shift to becoming a destination rather than a country of emigration. While Italy is still considered a Catholic country, the influx of immigrants has increased religious diversity without concomitant actions by the national government. Compared to other countries, Italy is seen to have

"largely avoided recognizing the cultural and religious implications of the process of pluralization" and remains "without an established model of integration or pluralism" (Allievi 2013, 724). Particularly in the area of religion, Italy's lack of a coherent policy towards religious pluralism is based on "the inability of the political class to metabolize the profound changes" in the country (A. Ferrari 2024, 110). While legislation towards religious diversity remains unformulated, frameworks related to cultural mediation, especially at the regional level, offer innovative adaptions that merit scrutiny.

2.1. *Legal frameworks for religious diversity*

The legal frameworks recognize pluralism and the freedom of religion is constitutionally protected, but the legal status of most religious minorities in Italy is weak. Silvio Ferrari argues that this is the case due to the lack of a unique law on religious freedom and the fact that laws governing religious minorities are nearly a century old.[3] Enshrining the principle of religious pluralism, the Italian Republican Constitution of 1947 established the basis for religious freedom while situating Catholicism as the national religion and minority religions are accorded only limited recognition. Article 7 protects the bilateral relations between the state and the Catholic Church. In particular, Article 8 protects the communal aspects of religious minorities and religious denominations are seen to be equally free in the eyes of the law. The individual right to religious freedom is protected in Article 19, which safeguards religious practices for "everyone" including non-citizens (Dutta 2019, 83). However, religious minorities are divided across three categories, depending on whether they have been officially recognized. Enacted during the fascist period, Law n. 1159 (Legge 24 giugno 1929, n. 1159) that regulates all non-Catholic religions together was maintained by the Italian Republic and is considered the root cause of many of the inequalities facing religious minorities (Bottoni 2023, 178). Magazzini et al. (2022, 407) categorize the Italian Constitution as a case of moderate secularism, yet the majority religion receives disproportionate benefits from the state. The extension of some of the privileges of the majority religion to some minorities reflects the Italian State's recognition of religious pluralism, but only along the lines of selective cooperation

[3] See Atlas of religious or belief minority rights, Italy: https://atlasminorityrights.eu/countries/Italy.php#top

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(Bottoni 2023, 186). This explains why many new religious minorities may continue to fall outside these frameworks in terms of protections and rights.

Though immigration to Italy became more significant in the 1970s, it is only recently that this influx became more visible and led to the need to define some contours for diversity governance. Various laws in the area of employment in the 1980s belatedly attempted to regulate the presence of foreigners and move towards integration (Allievi 2013, 726). The Martelli Law of 1990 aimed to regularize immigrant employment and set a quota for residence permits. Next, the so-called Turco-Napolitano Law passed in 1998 further regulated the process of acquiring permanent residency while also creating temporary detention centers for illegal and irregular immigrants. However, this law also included the first reference to cultural mediators, as will be discussed below. The subsequent Bossi-Fini Law passed in 2002 focused on illegal migration and tightened regulations. In summary, the laws dealing with immigration failed to reckon with the impact of cultural and religious pluralism nor did they make much reference to cultural integration (Allievi 2013, 730). This omission to recognize and put forth proposals for addressing the process of cultural pluralization and fostering integration was surprising in light of the increasing challenges and debates that were centering on the country's multiculturalism. Situations were emerging where the practices of minority religions came in direct conflict with the organization of social and civic life in Italy (Ambrosini et al. 2012; Timellini 2019). Meanwhile, the intensity of controversies in cases and situations involving religious education, symbols, and the building of mosques "suggests potential difficulties in imposing secularism" (Dutta 2019, 91).

In summary, diversity governance towards new religious minorities need to be considered alongside the regulation of foreigners in Italy and their integration. In Italy, the debates around immigration and increasing cultural and religious pluralism continue to be characterized by a dualistic thinking. As Dutta describes, a distinction endures "between 'us' (hosts, Italians, Catholics) and 'them' (guests, immigrants, Muslims)" (Duta 2019: 96). However, a number of examples from cities and regions in Italy attest to innovation and adaption in diversity management related to religious minorities (Gugliemo and Sbalchiero 2024; Molli 2025; Griera et al. 2019; Rech 2024). These practices reflect dualistic thinking between the inadequate laws of recognition and policies towards religious minorities and the policies and practices towards building cohesion at

the regional level.[4] Among the policies and practices seeking to build cohesion, we need to also consider the use of cultural mediation, which would be promoted as part of national and regional legislation around immigration.

2.2. *Laws and policies around cultural mediators in Italy*

As Italy grappled with immigration and growing religious diversity, the figure of the intercultural mediator became elevated as a useful tool for migrant integration as part of diversity governance. Cultural mediators had already begun to be implemented but in an unsystematic way in healthcare, social, and education services in Italy. The first national legislation for migrant integration included the concept of intercultural mediation: passed in 1998 and known as the Turco-Napolitano Law, Legislative Decree 286/98 on the "Regulations on immigration and provisions on the status of foreigners" promotes the use of cultural mediators (*mediatori interculturali*) as part of measures for social integration.[5] In a nod to the valorization of the transcultural capital of recently arrived migrants, Art. 42, 1d pushes governing bodies at municipal, provincial, regional, and national levels to collaborate with local associations in the employment of foreigners who had been in Italy for more than two years as intercultural mediators. This was seen as a means "to facilitate relations between individual administrations and foreigners belonging to different ethnic, national, linguistic and religious groups." This emphasis on facilitation by members of new religious minorities and migrants speaks to the strategic resources possessed by this group in diversity governance.

A set of guidelines produced by the Italian Interior Ministry in 2009 further expounded on the role of a cultural mediator. The emphasis was on the notion of intercultural mediation as a "bridge" that differed from conflict mediation processes.[6] Zadra points out that the focus on bridging "allows for new avenues of exchange, without asking any of the areas to renounce their positions in any way". There

[4] The author appreciates an anonymous reviewer for sharing this insight.

[5] These provisions were later incorporated into Articles 38 and 42 of Legislative Decree n. 286 of July 25, 1998, "Consolidated Act on Immigration Regulations" (*Testo Unico sull'immigrazione*).

[6] See *Linee di indirizzo per il riconoscimento della figura professionale del mediatore interculturale del Gruppo di Lavoro Istituzionale per la promozione della Mediazione Interculturale, p. 8.*

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is also an emphasis on avoiding notions of superiority, a critical aspect as the contexts where cultural mediators operate may be characterized by power asymmetries (Zadra 2025, 146). The guidelines explained that culture was intended broadly, "encompassing cultural and religious customs, traditions, and lived experiences, with language as a primary factor expressed through verbal and non-verbal communication, including body language and proxemics." The guidelines also valorized the notion of identity and how cultural identity was not to be challenged during mediation but rather identity was to be "seen as a value, not an obstacle." The guidelines stressed that dialogue between different cultures "fosters enrichment and exchange, helping to develop intercultural relational skills that are essential in the context of global citizenship." Overall, the guidelines suggest a very open dialogue where exchanges through language and other communication could be facilitated on equal footing along with the possibilities for new hybrid forms of identity and belonging to flourish.

As part of its diversity governance, the national legislation continues to detail an important role for cultural mediators. Criteria were specified in a Ministerial Order in 2010, their importance was reinforced in the 2014 National Integration Plan for Persons entitled to international Protection and there is a register of public and private mediation organizations provided by Ministry of Justice (Karanikola and Panagiotopoulos, 2025). Cultural mediators are seen as crucial for handling current migration flows into Italy; starting in 2018, the International Organization for Migration has contracted 280 cultural mediators with funding from the Italian Ministry of Interior to assist with recently arrived migrants at entry points.[7]

Yet, while the law developed policies on cultural mediation as an important resource for migrant integration as part of diversity governance, there is still no national legal framework that outlines implementation provisions. In light of this absence in guidelines for the training and assessment of cultural mediators, the gap has been filled by NGOs, charities, social cooperatives, and universities, along with regional and local institutions (Avolio et al. 2023, 131). The resulting fragmentation across different actors can negatively affect regulations and practices (Biague 2017). Lack of institutional professionalization is also cited as a weakness in the building of networks between cultural

[7] See: https://reliefweb.int/report/italy/voices-hope-vital-role-cultural-mediators-supporting-migrants

mediators and stakeholders (De Leo et al. 2024) and their involvement in legal proceedings (Cavallari 2025). In some cases, adaptations have been developed in response to the lack of inter-institutional relationships and standardized procedures; cultural mediators often must work to connect different services and foster collaboration (De Leo et al. 2024). As an autonomous province, seeking to operate in the absence of a clear policy framework at the national level, South Tyrol will forge its own policies.

3. **Diversity governance towards religious minorities in South Tyrol**

Responding to religious diversity is a relatively new aspect of diversity management for South Tyrol. The province is well known for having successfully resolved a minority conflict with the development of a unique legislative and political autonomy and consociational agreements (Carlà 2015). Three different historic ethnic and linguistic groups are present in the territory and are officially recognized; these include German, Ladin, and Italian speakers. Much of the attention around tolerance, participation, and sharing of resources is organized to reflect the region's linguistic pluralism. However, demographic shifts called for new paradigms in South Tyrol (Medda-Windischer 2019).

Incoming minorities of migrant background are often described as "new" compared to the "old" national minorities that have defined the previous diversity arrangements (Medda-Windischer 2008). The management of the diversity brought by the influx of new minorities "ends up intersecting with the [local] complex historical and identarian dynamics" (Landini 2024). The approach that South Tyrol has taken towards foreign migration is seen, in particular, to reflect the institutional stances of the "old" linguistic divisions: this increasing diversity from migration had led to the adoption of a "defensive approach to migration", which is based on these dynamics but is also related to the growth of far-right parties and the proliferation of anti-immigration campaigns locally and nationally (Medda-Windischer 2017, 555). New religious minorities fall within the category as minorities of migrant background.

3.1. *New religious minorities in South Tyrol*

The religious profile of South Tyrol reveals a predominantly Catholic province but recent migration flows have increased religious

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diversity. Data suggest that more than 90% of the population is Catholic while the remainder are linked to various religious faiths such as Islam, Evangelical-Lutheran, Judaism, Hinduism, Buddhism, Sikhs, and Orthodox Christianity (Medda-Windischer and Membretti 2020, 34). Based on the census of 2024, the number of foreign residents (without Italian citizenship) is calculated at more than 10% of the population (Volgger et al. 2024). Comparing this to statistics around the national proportionality in Italy, among this population of foreign residents, nearly 50% are estimated to be Christian and around 40% are Muslim.[8] Most migrants are settled in the larger towns and cities of South Tyrol.

The situation for new religious minorities is a mixed picture. A 2011 report on diversity provided evidence that, compared to the country of origin, migrants found the situation regarding religion and culture in South Tyrol to be better (22,7%) than their origin country (Medda-Windischer et al. 2011, 30-31). However, the same report also found that nearly 50% of respondents reported that there were no suitable places of worship in the nearby vicinity. A 2021 report found that a majority of migrants (64,3%) attested to the importance of maintaining religious traditions; yet, the research found that respondents also stressed the private and family-related nature of cultural and religious traditions (Crepaz 2012, 20, 32-33). Meanwhile, various political parties have used strong language against migrants, Islam, and the need to protect local cultures, traditions, and religion (Carlá 2013, Part I). Episodes of religious othering have been found in educational institutions (Thoma 2023). The needs of members of new religious minorities reflect the challenges of maintaining transnational ties while laying down local roots, crafting hybrid identities amid an increasingly hostile atmosphere for religious diversity. Moreover, they speak to the need for cultural mediators to assist in connecting members of new religious minorities and helping them seek accommodations.

3.2. *Implementing policies for cultural mediators in South Tyrol*

While the Italian State retains jurisdiction over many migration-related matters, the province of South Tyrol can submit non-binding opinions. Moreover, as an autonomous region, South Tyrol has

[8] See: Astat info, *Popolazione straniera residente 2022,* 14 Aprile 2024, p. 6.

competencies on integration and thus the ability to pass legislation to regulate schools, labor, welfare and health (Medda-Windischer and Carlà 2015). The autonomous province is "granted certain powers in crucial areas for migrants and for the management of their cultural, linguistic and/or religious diversity" (Medda-Windischer 2017, 552). This autonomy was innovatively applied in the case of cultural mediation.

Historically, South Tyrol was the first Italian Province to invest in developing the position of the *mediatore interculturale* (intercultural mediator), following the increase of immigration in the late 1990s (Carlà 2013, 93-94). Previously, the position of para-mediator had been present on a small scale, within networks of families and friends due to a lack of non-EU citizens in the region (Biague 2017, 272). In 2001, this position was institutionalized and political guidelines were developed for the training and implementation of cultural mediators in schools and other public agencies. The deliberation of the provincial council (D.G.P.) n. 4266/2001 with reference to Provincial Law n. 40/1992 regulating the Vocational Training Organization, implicitly defines the role of the intercultural mediator as part of the approval of the related training program. This legislation gave the role of cultural mediator legitimacy by providing official definitions and direction for the criteria and professional training of cultural mediators. The advancement of policy moved in tandem with the increase of migrants in the territory, with the expectation that migrants with transcultural capital would enter the field as cultural mediators.

The regional policy towards cultural mediators emphasizes not only understanding and respect but also the possibilities for transformation and adaptation. According to the resolution, the intercultural mediator is described as "an intercultural operator, an educator of differences" who is capable of "facilitating communication and linguistic and cultural understanding between people from different cultures, particularly between foreign users and public or private service providers, while respecting the rights of all parties involved in the relationship."[9] This includes not only helping foreign users make use of Italian services and institutions but also "encouraging services to progressively adapt to the needs of foreign users, and preventing and managing conflicts between foreign users and local services." Moreover, there was an emphasis on

[9] See D.G.P. of 26 November 2001, n. 4266 Approval of the program of the annual full-time course for the qualification of 'Intercultural Mediator' (art. 5, comma 2 della LP 12.11.1992, n. 40). Official Gazette of the Region Trentino-South Tyrol, n. 51/I-II of 11. 12. 2001, p. 92.

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the neutrality of the position, similar to the national guidelines discussed above: "The role of the mediator is therefore to act as a bridge, a link, and an interface between foreign users and public or private service providers, as well as between different cultural assumptions and meanings. This must be done while respecting the specific roles, functions, and powers of each party in the relationship, without replacing or representing either side."[10] These calls for adaption to the needs of foreign users speaks to a more expanded role for cultural mediators in the region, especially when thinking about power dynamics, compared to the national legislation.

South Tyrol's policy also opened the possibility of encouraging the recruitment of migrants and members of new religious minorities with transcultural capital. The training course was open to eligible candidates, who could be Italian or foreign nationals. Similar to the national legislation, there is a two year's residency requirement, this time in the territory of South Tyrol. In a nod to the diversity management already in place, candidates are expected to have knowledge of both Italian and German. This was alongside a high level of proficiency in the mother tongue or "vehicular" language of use in the language-cultural mediation. Within the province, there was the expectation that intercultural mediators would carry out "cultural interpreting activities", which consisted of explaining to service operators the "significance of foreign users' behaviors and communication" and in turn, clarify to foreign users "the logic and organizational culture of Italian services and institutions."[11] This emphasis on mutual understanding would benefit from the transcultural capital of someone recently arrived but yet familiar with Italian practices.

Regarding the operational contexts, which are also implicitly defined by the same D.G.P. n. 4266/2001, the intercultural mediator may be called upon to intervene within public and private services in the areas of education, employment, and healthcare. The first group of professionally trained cultural mediators delivered services at the hospital in the provincial capital of Bozen-Bolzano (Zadra 2025, 149). The following decade saw these programs further expanded and mediators were integrated into other sectors such as prisons and schools (Agostini 2014).

Observers report that there were some growing pains related to the qualifications and how to assess practical experience for people

[10] See D.G.P. of 26 November 2001, n. 4266, p. 91-92.
[11] See D.G.P. of 26 November 2001, n. 4266, p. 91.

arriving without formal certification/credentials.[12] There was also recognition of the variance in language competencies. In terms of awarding contracts, the public administrative requirement to accept the lowest bids resulted in the reduction of the quality of cultural mediation. For some time, cultural mediators were treated as language interpreters and their full value was not appreciated, for example in the area of non-verbal communication.

Despite these early challenges, the province's work in the area of intercultural mediators was considered pioneering and contributed to defining the professional role at the national level.[13] A 2009 Conference of Regions and Autonomous Provinces had already focused on the recognition of the figure of the cultural mediator and highlighted the activities of South Tyrol.[14] An Interregional Project for the Qualification of Competencies and Professional Figures in the Humanitarian Sector – Peace Operator and Intercultural Mediator led to a Memorandum of Understanding with a number of regions who have agreed to coordinate in this area.

3.3. *The impact of the law on integration as part of diversity governance*

While the province was the first to enact legislation on intercultural mediators, there were no forthcoming measures and laws outlining a comprehensive approach to integration as part of diversity governance. Indeed, before the enactment of the Provincial Law in 2011, South Tyrol was one of the few provinces of Italy that did not have its own regional law on migration. As Carlà argues, the delay in enacting a provincial integration law was in tension with the desire of the government to expand and exercise its political competencies (Carlà 2013, 96). This slow approach was connected to the presence of xenophobic parties, concerns for the effect of migrants on the fragile relationship between the different language groups (Medda-

[12] Based on conversations with people familiar with decades of experience with diversity governance.

[13] Provincia Autonoma di Bolzano. 2002. *Presentato il corso per mediatore interculturale, "un ponte tra immigrati e societa",* April 6, 2001; and Provincia Autonoma di Bolzano. 2002. *La Provincia nel gruppo di lavoro delle Regioni sulla mediazione interculturale: accolta la proposta Gnecchi*, June 27.

[14] Conferenza delle Regioni delle Province Autonome. 2009. Riconoscimento della figura professionale del Mediatore interculturale. P. 9.

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Windischer 2011, 24) and the strength of regional minority cultures and languages (Wisthaler 2015).

The 2011 law set in place a new institutional framework that reflected efforts towards the integration of the "new" migrants outlining in particular "a process of mutual exchange" and identifying as a goal: "the mutual recognition of cultural, religious and linguistic identities" (Article 1). The law also provides for the guiding principles of the process of integration and social inclusion of the migrant population in South Tyrol. The act briefly defines integration as a "process of exchange and reciprocal dialogue" and it states that South Tyrol "favours the reciprocal recognition and valorisation of the cultural, religious and linguistic identities, aspiring to the principles of equality and freedom of religion" (Article 2). Moreover, as part of diversity governance, one of the objectives of the provincial government was to pursue the reciprocal comprehension of cultural differences (together with the knowledge of the regional history and culture) in order to promote integration.

Intercultural mediators were tasked with fulfilling this goal of fostering exchange and reciprocal dialogue through a specific framework for intercultural mediation outlined in Article 9. The promotion of intercultural mediation was described as a means to "improve relationships between foreign citizens, the local community, and institutions" (Article 9). In this regard, the various sectors were expanded, including education, employment, vocational training, social assistance, healthcare, and subsidized housing, a provincial list of intercultural mediators is established. Apart from measures for cultural mediators and reference to intercultural education projects and the general guarantee provided for in Art. 1, the law does not include further specific actions for sustaining the maintenance of migrants' mother tongues, customs, or guaranteeing the practice of their religion. Still, the expansion of sectors and registration list gave further shape and legitimacy to the cultural mediator role.

A more recent Deliberation also dealt with intercultural mediators and concerned the registration list that was to be managed and maintained by the Provincial Coordination Service for Integration. In the meantime, various training courses began to be offered by private institutions such as the social cooperatives Centro Documentazione e Cultura Sociale and Società Cooperativa Sociale (SAVERA). In sum, the passing of the 2011 law led to a significant increase in intercultural mediation activities (Biague 2017, 272). This second phase saw the implementation of regulations, making the system more efficient.

There are some notable features of the cultural mediator role in South Tyrol. The course for training cultural mediators was organized

bilingually, an unusual deviation from the compartmentalized language practices of the province. Due to the province's particularities of language diversity management, it has been seen as important to have mediation available in languages of the countries of origin, in addition to the officially recognized languages of the province (Biague 2017, 239). Meanwhile, the emphasis was on mediation with foreign citizens and not between the members of the three recognized language groups. Further, there are high expectations around religious knowledge and familiarity with the practices of the religious sects present in South Tyrol. A set of guidelines produced by the organization Porte Aperte noted that "not only is knowledge of languages (at least two) important, but they should also be well acquainted with the traditions, hierarchies, religious customs, sense of honor, perception of time, and other specific characteristics of the interacting cultures in order to facilitate mutual understanding" (Rapo and Rapo 2007, 20).

The overall experience of cultural mediators has been seen positively. As Pfanzelter and Rupnow (2017, 12) observe, "there is no doubt that these services have played a crucial role in fostering exchange between locals and immigrants, especially in recent years, as the complexity and scale of migration have increased unpredictably". Currently, South Tyrol is featured on the website of "living and working in Italy" hosted by the various Italian ministries as an example of good practices.[15] The website also lauded the province for promoting the initiation of various intercultural mediation projects in the territory that partnered public bodies and social cooperatives and associations. However, in the absence of a clear national legal framework, the field of cultural mediation continues to lack a regulated and official professional profile at the subnational level. As Biague (2017, 257) points out, "with few exceptions, intercultural mediation remains a service that is provided on demand and only where needed". He notes that the professionalization and development of the mediator profession is "a process that is still ongoing" (Biague 2017, 272). The lack of clarity around regulations and the increasing role played by private operators suggests government reluctance in fully implementing cultural mediation.

At the regional level, research suggests that the sector for cultural mediation in practice has promoted the engagement of persons with transcultural capital. Research has shown that the majority are

[15] See: http://sitiarcheologici.integrazionemigranti.gov.it/Attualita/Approfondimenti/approfondimento/Pagine/Mediazione/Bolzano_scheda.html#1

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women of migrant background, where their sociocultural knowledge about their countries of origin is recognized and appreciated (Biague 2017, 271). In this context, the cultural mediator with migrant background "helps her fellow countrymen navigate their way, accompanies them, explains how the most important social services work, and introduces them to the culture of the host country" (Biague 2017, 271). A recent survey of associations made up of citizens with migrant backgrounds found that over 53% engaged in intercultural mediation, even if not necessarily in the professional sense (Attanasio 2023, 16). In the preface to the survey, the Provincial Councilor for Integration Philipp Achammer explains how these entities offer another significant point of reference for migrants as "places for dialogue and exchange of opinions, to explore new cultural, religious, educational, and training contexts, thereby supporting people's social integration" (Attanasio 2023, 3). These findings confirm that officially and unofficially, cultural mediation is sustained by individuals of migrant background.

The NGO Savera, where many of the directors themselves have been of migrant background, offers further insights into how this policy looks in practice. Founded in 2009, Savera has the mission "to promote the integration and inclusion of foreign citizens, as well as fostering mutual understanding, as well as mutual awareness."[16] The description also imparts how "those running the cooperative have a profound knowledge of the linguistic and cultural heritage of the original and host territories of the foreign nationals in the Province of Bolzano." The region supports the professional courses for training intercultural mediators.[17] Language requirements for cultural mediators include being a native speaker of the language of new citizens of the Province along with good knowledge of Italian and/or German. The expectations of bilingualism appear to have been relaxed; among the roster of cultural mediators in 2016, there were 45 languages spoken.[18] The emphasis on being a native speaker reinforces the value of transcultural capital for cultural mediators and this is reflected in their linguistic diversity. In supporting members of new religious minorities as cultural mediators, Savera provides various accommodations. Cultural mediators don't have to work excessively during Ramadan and can decide their own working hours. These organizational details demonstrate the importance and support given

[16] https://www.savera.it/en/
[17] https://www.savera.it/trasparenza/
[18] See: https://news.provincia.bz.it/it/news-archive/547912

to people of migrant background whose transcultural capital is clearly valued.

Conclusions

This piece aimed to explore how public policies have developed around the role of cultural mediators in diversity governance specifically in terms of their work related to religious diversity and to what extent these policies can be enhanced by engaging migrants and members of new religious minorities as cultural mediators. Firstly, I demonstrated that in Italy, there has been a steady development of public policies for cultural mediators that has elevated their role in migrant integration as part of diversity governance. This role was expanded upon and deepened at the subnational level, looking at the situation in South Tyrol. The province's support for cultural mediation began unevenly but was strengthened in ways that improved services. I showed how legislation and the complementary guidelines appear to have gone a long way in providing structure, clarity, as well as legitimacy for the activities of cultural mediators. What was seen as an unsystematic process for training and implementing cultural mediators has been greatly improved. This demonstrates the impact of legislation and the need for regulation for public administration of such an integration measure. Here we see how public policies translated from the state to subnational level can offer innovations in diversity governance. Implementation continues to be uneven with persisting challenges related to professionalization.

Secondly, I marshalled the concept of transcultural capital to interpret when and how migrants themselves, often members of new religious minorities, are being encouraged to engage as cultural mediators as part of public policy. Legislation at both national and subnational levels confirmed the significance of enlisting migrants as cultural mediators as part of the overlap in policies around governing foreign migration and cultural and religious diversity. The example of South Tyrol detailed the recognition of transcultural capital in the findings around cultural mediators who themselves have migrant backgrounds and the ways in which cultural mediator associations can accommodate new religious minorities. These developments herald new modes of participation that offer the opportunity to better incorporate minority perspectives and govern religious diversities in ways that will enhance diversity governance.

Various constraints remain and will need to be addressed through further national, regional, and provincial regulations, particularly

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around the process for professionalization. The fact that much cultural mediation happens outside of professional settings —through migrant associations— suggests that some flexibility is needed when thinking about the needs and contours of the field. Meanwhile, there is reflection on the changing demographics and the shifting needs of foreign migrants who may express different requirements and different migration backgrounds. Future research can examine the interaction between subnational political autonomy and diversity governance in relation to integration policies and the protection of religious minorities.

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The ethics of enforcement: human rights-based policing in duty-oriented societies

La ética de la aplicación de la ley: la vigilancia policial basada en los derechos humanos en sociedades orientadas al deber

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Abstract: This article examines the tension between rights-based policing and duty-based morality. Liberal democracies, concerned for individual autonomy, procedural safeguards, and encroachment by the state, continue to create tensions with morality rooted in relational duty and collective ethics. In particular, non-Western societies often conceptualize justice in terms of social harmony and duty, representing justice shaped by a cultural context. Through

multidisciplinary theory and comparative cases, this article shows how the imposition of rights-based frameworks results in cultural resistance. The paper discusses informal justice systems. Therefore, on the one hand, it explores the promise and peril of hybrid justice models. Accordingly, on the other hand, it proposes a more sophisticated or nuanced conceptualization that respects cultural contexts, without undermining the universality of core human rights protections.

Keywords: Human rights universalism, rights-based policing, duty-based ethics, legal pluralism, cultural relativism.

Resumen: Este artículo examina la tensión entre la vigilancia policial basada en los derechos y la moral basada en el deber. Las democracias liberales, preocupadas por la autonomía individual, las garantías procesales y la injerencia estatal, siguen generando tensiones con la moral arraigada en el deber relacional y la ética colectiva. En particular, las sociedades no occidentales suelen conceptualizar la justicia en términos de armonía social y deber, representando una justicia moldeada por un contexto cultural. Mediante teoría multidisciplinar y estudios de caso comparativos, este artículo muestra cómo la imposición de marcos basados en los derechos genera resistencia cultural. El trabajo analiza los sistemas de justicia informal. Por lo tanto, por un lado, explora las ventajas y los riesgos de los modelos de justicia híbridos. En consecuencia, por otro lado, propone una conceptualización más sofisticada y matizada que respeta los contextos culturales sin menoscabar la universalidad de la protección de los derechos humanos.

Palabras clave: Universalismo de derechos humanos, modelo policial basado en derechos, ética basada en el deber, pluralismo jurídico, relativismo cultural.

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1. **Background**

Policing models based on human rights-based framework have increasingly emphasized values such as transparency, accountability, and the safeguarding of the rights of the individual. These models spring from international human rights law, and the theory of liberal democracy, and prevail with an approach to law enforcement that takes individual rights, equality, and the prevention of state abuses into consideration. However, this model of rights-based policing presumes that communities share a moral understanding of something like individualism, which fails to establish a common moral ground in distinctly morally plural societies.

In many societies the existing moral structure prioritizes duties over rights, particularly those shaped by collectivist traditions, religious law, or customary norms. In these communities, the interest does not tend to lie in what is owed to an individual by the state or society but rather what is owed to others, elders, God or religious authorities, or community, or merely one's family. For instance, Confucian, Islamic, Hindu, and many African communitarian worldviews emphasize obedience, social harmony, and moral conduct based on one's social role rather than the assertion of personal entitlements (An-Na'im 1990; Tu 1993).

This difference between liberal rights discourse and duty-based moral systems highlights a broader philosophical tension that animates global discussions of justice and legitimacy in relation to the proper order of social relations. It raises even more serious questions about the legitimacy of reform motivated externally, and under what conditions policing can remain culturally embedded and normatively defensible. It is important to note at the outset, however, that rights-based and duty-based frameworks should not be understood as hermetically sealed, mutually exclusive systems. Rather, they represent identifiable tendencies along a normative continuum upon which different societies are differently positioned, and along which the same society may move over time (Donnelly 2013). Customary duty-oriented societies, for instance, often retain significant space for obligations owed by the community to the individual, even where individual rights claims are not formally articulated, whereas certain religiously grounded duty-based systems may be considerably more demanding of individual obligation without a corresponding architecture of individual entitlement (An-Na'im 1990).

2. **Problem statement**

This paradox between universal rights and local duties exists at the heart of this paper. Can rights-based policing be meaningfully implemented in societies where moral legitimacy comes from fulfilling relational obligations rather than asserting individual rights? What happens when policing reforms are inspired by international norms are introduced in settings where moral legitimacy is measured not by legal equality, but by fulfilling one's duty towards others?

The imposition of rights-based models in culturally diverse societies often produces resistance, not merely due to institutional constraints, but because of fundamental moral misalignments. This resistance is commonly interpreted as legal imperialism, undermining the legitimacy of reform efforts and alienating communities from the very institutions meant to protect them. It must equally be acknowledged, however, that resistance to rights-based frameworks does not always arise from sincere moral difference alone. At times, such resistance is driven by the deliberate interests of those who benefit from the existing distribution of power, such as elders, patriarchal authorities, or political elites for whom the language of cultural preservation functions as a shield against accountability (Donnelly 2013; Mutua 2001). A complete analysis of the legitimacy of policing reform must therefore distinguish between resistance rooted in genuine normative pluralism and resistance rooted in the protection of privilege.

3. **Objective**

This article explores the underlying ethical and moral foundations of rights and duties, and how those moral systems shape both theoretical and operational models of policing. It examines case studies from across the world in which cultural resistance to international human rights principles has manifested. It also assesses informal justice mechanisms like jirgas, panchayats, and customary courts that continue to function with significant social legitimacy, even when their practices contradict international human rights standards (Baxi 2010).

The objective is not to advocate for the supremacy of either rights or duties, but to critically examine the conditions under which policing reforms can be both culturally legitimate and normatively sound. It pursues to identify reform strategies that attempt to balance universal

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human rights principles with culturally rooted moral systems, without compromising either.

4. **Literature review**

This literature review explores the very foundations that shape policing models across culturally diverse societies. It combines classical philosophical traditions with legal codifications, and recent empirical research to illuminate the tension between rights-based and duty-based approaches to justice. It is organized thematically to reflect the interdisciplinary nature of the research and to establish a theoretical foundation for analyzing the legitimacy of policing across moral traditions.

4.1. *The liberal conception of rights: individualism and autonomy*

a) Origins in enlightenment rationalism

The ongoing idea of individual rights first emerged in the Enlightenment period. It was when philosophers such as John Locke, Jean-Jacques Rousseau, and Immanuel Kant articulated the idea of a society that is founded on the fundamental human dignity and liberty. Among them, Locke proclaimed that people by birth possess 'natural rights' to life, liberty, and property, all of which governments must uphold (Locke 1988). Rousseau put forth his idea of social contract, where individuals consent to be governed but in exchange for protection of these rights (Rousseau 1968). Kant refined the topic of rights, but he viewed the rights of individuals through the lens of rational autonomy and moral obligation. He argued that people should always be held in respect for who they are and, therefore, should never be used for the purposes of someone else (Kant 2012). Which, of course, relates directly to the concept of rights in modern understanding. This individual-focused position is fundamental to the current political and legal doctrines that eventually formed the basis of constitutionalism, liberal democracy, and the responsibility of the modern state's obligation to protect individual liberties. It is important to note, however, that the concept of human dignity, which is often treated as a distinctively enlightenment inheritance, predates these thinkers considerably. Christian natural law theorists such as Thomas Aquinas grounded human dignity the image of God present in every

human being, from which flowed obligations of justice that both rulers and subjects were bound to observe (Finnis 1980). Similarly, Islamic jurisprudence had long recognized the concept of human dignity and the protection of individual life, intellect, lineage, religion, and property under sharia law (Auda 2008). This broader genealogy of right-adjacent thinking cautions against any reading of IHRL as exclusively a Western or Enlightenment invention.

b) Legal codifications of rights

The Universal Declaration of Human Rights, which was codified in the aftermath of World War II, was a direct product of similar enlightenment thinking. For instance, it declares that "all human beings are born free and equal in dignity and rights" (United Nations General Assembly 1948, art. 1) and that "everyone has the right to life, liberty and security of person" (United Nations General Assembly 1948, art. 3), which carries the same ideology. Even the International Covenant on Civil and Political Rights and the European Convention on Human Rights built on the same liberal premise that any mode of justice must also be organized around preventing the state from abusing individual rights.

In recent times, scholars have widened this debate by examining how legitimacy is constructed in practice. For instance, George Klein's ethnographical study demonstrates that police legitimacy is not simply a function of legal authority, but rather it is negotiated through procedural justice and community engagement. Officers time and again act as "street-level bureaucrats," administrating moral duty rather than enforcing abstract rights (Klein 2024). Which suggests that even within liberal framework, legitimacy is dependent on the relational dynamics and perceived fairness, not exclusively on codified rights.

4.2. *Duty-based ethics: an overview of non-Western moral systems*

a) Confucianism: hierarchy, harmony, and ritual obligation

The Confucian moral tradition, which is heavily influential across East Asia, grounds justice not in rights but in the fulfillment of social roles and obligations. Central to Confucianism is the concept of *li* (ritual) and *ren* (humaneness), both of which determine behavior through a comprehensive and interconnected framework of family and social moral

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obligations. Confucius teaches that the individual exists within a network of relationships, such as parent-child, ruler-subject, elder-younger and that morality ultimately lies in behaving appropriately within each relationship (Tu 1993). As Daniel Bell (2006) argues Confucian societies often see the family and community, not the individual person, as the basic moral unit. Rights, if they even exist in this ideology, are subordinate to the effective harmonious functioning of society. Social harmony is given priority over adversarial justice. In this context, policing functions as a mechanism for preserving social order and reinforcing moral conduct rather than protecting individual rights.

b) *Islamic thought: divine duties and collective morality*

In Islamic legal traditions, justice is derived from God, and individuals have obligations or duties to God and the community. *Sharia* emphasizes obligations, but it does not emphasize rights in the way liberalism emphasizes rights. The basis of *sharia* law is as simple as obligations to pray, give charity *(zakat)*, and uphold social justice *(adl)*. While Islam does recognize certain rights like *haqq al-nafs* (the right of self), they are found within the framework of duties to God and the community (An-Na'im 1990). Furthermore, under *maqasid al-sharia* (the intents and purposes of Islamic law), justice is understood through preserving religion, life, intellect, lineage, and property, and each with corresponding duties for the individual and society (Auda 2008). The term right is not autonomous; rights are derived from God and explained through the Quran and Hadith (Kamali 2008, 89–92). In practice, this ultimately manifests itself as policing for moral behavior, as described in the case of religious police patrolling society in Saudi Arabia (Cook 2000, 412–415), or community devoted to policing through religious mediation as seen in parts of Indonesia and Nigeria. Justice, in this sense, is achieved by fulfilling or performing the roles that God requires of individuals, and not by demanding personal rights (Abou El Fadl 2001, 72–75; Hallaq 2004, 156–160).

c) Hindu Dharma: social role and cosmic responsibility

Hindu philosophy on another hand presents the concept of *dharma* that is both about obligations owed to others, and the notion of cosmic order (Kane 1930, 1–5). In this philosophy each person is born into a social group *(varna)* and life stage *(ashrama)* and is morally

obligated to fulfill the duties appropriate to that status (Dumont 1980, 66–71; Sharma 2000). Rights are not rejected, but they are deeply rooted in the hierarchical obligations (Davis 2010, 89–93). Justice in this expression is a matter of balance and karma, rather than legal equality. Law *(dharmashāstra)* has codified obligations rather than an individual's claims on another individual, thereby affirming caste distinctions and roles related to gender (Lubin 2007, 93–122). Even though India's Constitution has liberal rights preserved into it, customary practices rooted in dharma continue to construct policing norms, especially in rural and caste-bound environments (Jauregui 2016, 78–82).

d) African communitarian ethnics: Ubuntu and relational personhood

African communitarian traditions, specifically the concept of *Ubuntu*, which means "I am because we are", present justice as collective (Ramose 1999, 49–52). Under which personhood is not something inherent to humans but is something achieved through harmonious association with others and moral responsibility (Mokgoro 1998). Wrongdoing is not limited to the breaking of a law but rather the breaking of relationship, and requires reparation through reconciliation, not through punishment (Tutu 1999, 34–38). *Ubuntu* rooted in restorative justice models have been incorporated to address wrongdoing in the post-apartheid South Africa's Truth and Reconciliation Commission (Wilson 2001, 9–12), as well as village courts in Malawi and tribal systems in Botswana (Englund 2006). This principle also touches on policing models focused on relationships, communal healing, and relational accountability, more than adversarial legalism.

Roni Factor and Yoav Mehozay's recent work propagated the typology of four normative value systems: religious–traditional, liberal, republican–communitarian, and ethno-national systems to explain how cultural orientations influence the construction of police legitimacy (Factor and Mehozay 2023). Their research also highlights the necessity of culturally responsive policing models.

4.3. *The Universalism dilemma: when rights meet roots*

Even if human rights law is aimed to reflect a cultural neutrality across the world, the philosophical center of human rights is deeply rooted in Euro-American liberalism. Human rights have faced this

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criticism several times over the course of time, with scholars like Makau Mutua depicting human rights as a "civilizing mission" that creates a binary triad of the "savage" non-western actors, the "victim," and the "savior" i.e. western actors (Mutua 2001). It's failure to account for different social contexts has led to cultural resistance and accusations of legal imperialism, particularly in the areas where traditional duties govern family law, gender relations, and community conduct. Scholars such as Abdullahi An-Na'im have argued persuasively, however, that the proper response to this critique is not to abandon rights but to re-root them in the moral vocabularies of different traditions, demonstrating that analogues of dignity, fairness, and protection from abuse are present across cultures even where they are not framed in the language of individual entitlement (An-Na'im 1990). This approach of internal cultural legitimation, rather than external imposition, offers a more sustainable foundation for rights-based reform than either a universalism that ignores context or a relativism that capitulates local power.

5. **Methodology**

5.1. *Research design*

This study uses a qualitative and literature-based research design. The aim of this design is to explore the tension that exists between rights-based and duty-based policing models across societies which are culturally diverse in nature. The research implements a multidisciplinary framework that integrates legal theory with moral philosophy and comparative policing studies to examine how different moral systems help in shaping the legitimacy and functionality of law enforcement institutions.

Rather than using an empirical fieldwork methodology, this study uses theoretical analysis and comparative case inquiry. The reason why this approach is used, is to examine the philosophical basis and implications of policing reforms. Because this study is highly interpretive in nature, it allows for essential engagement with different doctrinal texts, cultural traditions, and international legal instruments. This approach further enables the identification of underlying faults and the conditions under which reform strategies may succeed or fail. The analysis proceeds on the understanding that rights-based and duty-based moral frameworks are best treated as poles on a normative continuum rather than as binary opposites, even as the paper identifies and analyses tendencies that cluster around those poles for analytical clarity.

5.2. *Literature review process*

The literature review underwent a systematic yet iterative process that aimed to identify, evaluate, and synthesize important sources across fields. The literature review consisted of the search of targeted key terms based on various databases including JSTOR, HeinOnline, SSRN, and Google Scholar. The search terms included combinations of the following terms, "rights-based policing," "duty-based ethics", "legal pluralism," "human rights universalism," "form of justice," and "cultural legitimation."

Selected sources were determined based upon standards of scholarly rigor, relevance to the research questions, and further theoretical or practical debates within the literature. Notably, the review prioritized high impact law journals, interdisciplinary journals, and texts that assessed the universalism-relativism debate related to theoretical human rights discussion.

The review incorporated both foundational texts and recent developments, to ensure that both historical depth and contemporary relevance has been maintained. Finally, to ensure pluralistic representation the literature review emphasized sourcing literature from the Global South, and alternative worldviews in opposition of Eurocentric legal paradigms.

5.3. *Limitation of methodology*

Because this is strictly desk-based research, it is restricted by its reliance on secondary sources only. Since there is an absence of primary data, such as interviews with stakeholders, surveys, or observation of the work in the field, it limits the ability of this research to assess real-time community responses or institutional dynamics.

There are also constraints associated with the study's scope as it is limited by the availability and accessibility of documented practices of informal justice systems. Interpretations of non-Western moral systems are facilitated heavily through academic literature, which may introduce framing biases.

Despite these limitations, the methodology adopted for this research is appropriate for the study's conceptual and normative focus. Future research should build on this foundation through empirical fieldwork, stakeholder engagement, and participatory observation to capture lived experiences and institutional nuances.

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6. **Moral frameworks and policing models**

6.1. *The role of policing in traditional societies*

a) The duty-centered police model

In many cultural settings where social obligation is prioritized over individual rights. In those settings, policing is more frequently seen as an extension of social duty (Government of Japan 2016; People's Action Party 2019) rather than an instrument to enforce individual rights. Law enforcement there is usually framed as a social responsibility, with a fundamental emphasis on maintaining public harmony, fulfilling moral obligations, and reinforcing collective norms (Shan 2014, 123–140). This policing model conveys the idea that preserving collective welfare is the primary concern and that individual welfare is expected to, at times, yield to collective needs of the society. Accordingly, police are often seen not as the guardians of individual rights, but as moral agents tasked with upholding culturally sanctioned duties of society as a whole.

b) The family as the first line of defense

In certain traditional societies, particularly those that follow a patriarchal culture, the family head serves the role of the primary institution for policing and social control. The role of police as an institution is secondary to familial oversight, with elders or heads of families are expected to enforce order within their home (Pkalya et al. 2004, 89–95). The argument made is based on the belief that individual rights are best protected through interpersonal relationships and obligations to one's kin and elders. A concept that can be used to clarify this example would be how the concept of *Ubuntu* influences family and community-based policing in African communities (Panning 2024). In an *Ubuntu* type of paradigm, surrogates or elders may work as mediators to address any disputes within the community while ensuring that the conduct of individuals aligns with social expectations (Panning 2024). This model reflects an interpersonal conception of justice, where social unity is maintained through interpersonal accountability rather than any formal legal interference.

c) Religious policing and moral order

In any society where religion is a prominent source of moral and legal norms, police forces may eventually act as an extension of divine

law that is derived from religious texts. In this context, policing is not simply a legal function, rather it becomes a sacred duty to enforce divine law and protect religious belief. Examples include the role of religious police in Saudi Arabia, whose primary duty is to enforce the observance of Islamic law (Commins 2015, 66), or the religious courts that function in some parts of Israel (Bentwich 1948, 33–46) and India (Rani 2014, 129–139), which address matters of family law and personal conduct according to religious principles. In such societies, the police's authority is primarily linked to their duty of protecting the moral purity of society. This unusual blend of legal and theological authority complicates the application of secular human rights norms, particularly in areas of gender, sexuality, and personal status law.

6.2. *Rights-based policing: the Liberal model*

a) The liberal state and police as protectors of rights

Rights-based policing represents a shift in the ideology of policing from duty-based models. This approach originates from liberal political theory that views civil liberties and personal freedom as the foundation of justice. In a liberal democratic setting, the role of the police is primarily to protect the citizens' rights to life, liberty and property[1]. The model assumes that the primary role of the police is to intervene in order to resolve conflicts that involve an individual's rights[2], and limiting their role only to safeguarding individual freedoms, rather than enforcing moral duties of the society[3]. Police are to act as neutral agents of law enforcement with the obligation to act impartially to prevent individuals from experiencing harm, and an obligation to ensure citizens can exercise their rights without concerns of interference (Skolnick 1993).

b) Police accountability and the rule of law

A rights-based approach to policing model is inherently linked to the principles of accountability and transparency (Walker 2014, 45–67). In Modern democratic systems mechanisms are in place with the purpose

[1] *Warren v. District of Columbia*. 1981. 444 A.2d 1 (D.C. Ct. App.). *DeShaney v. Winnebago County Department of Social Services*. 1989. 489 U.S. 189.

[2] *Town of Castle Rock v. Gonzales*. 2005. 545 U.S. 748.

[3] *Lawrence v. Texas*. 2003. 539 U.S. 558.

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of holding police forces accountable to the law. Some of these mechanisms do include independent oversight bodies, judicial review, and public accountability through elected officials[4]. In a liberal society, police actions are dictated by strict protocols that are in place designed to uphold due process and proportionality. It ensures that interventions when made are lawful and justified in nature. Police must function within legal norms that protect individuals' rights, particularly vulnerable and marginalized people (Bowling and Phillips 2007, 936–961). From a legal point of view, this approach prioritizes procedural fairness. It further ensures that police powers are exercised only when it is necessary and is being done with minimal interference with individual rights (Tyler 2003, 29–53). The legitimacy of policing, in this model, comes from legal rationality and social accountability rather than moral conformity.

6.3. *Police in value-diverse societies*

a) Multiculturalism and the challenge of policing

In multicultural societies, police must create an equilibrium between enforcing the law in an evenhanded manner and taking into account the differences in moral codes and/or laws[5]. Police agencies are required to implement a community partnership model, which includes engaging in cultural competency training and collaborating with individuals in the community in order to build legitimacy with the members of the community (Chan 1997). For instance, in Canada, community liaison officers work with Indigenous, Muslim, and immigrant communities to create culturally responsive forms of policing and to address mistrustful relationships formed due to the oppressive and violent past (Wortley and Owusu-Bempah 2011, 395–407). This model of engagement from police reflects a shift from enforcement, where legitimacy has to be earned through dialogue, representation, and procedural fairness.

b) The role of police in social integration

In societies that frequently receive migrants or are in post-conflict situations, police are often seen as integration agents providing

[4] *R (on the application of Commissioner of Police of the Metropolis) v. Police Misconduct Tribunal*. 2021. EWCA Civ 82.

[5] *R. v. Williams*. 1998. 1 S.C.R. 1128 (Supreme Court of Canada).

information about civil rights and the rule of law to newcomers. In Germany, for instance, there are specialized police-based outreach units whose purpose is to help support the refugee communities, with a particular focus on prevention of marginalization and dissemination of rights and obligations (Kaste 2018). In post-apartheid South Africa, it was seen that police reforms were made aimed at transforming the South African Police Service (SAPS) from a coercive and authoritarian tool to a community-oriented police service supporting democratic values (Phillips 2017). These examples rightfully highlight the potential for reimagining the role of a police institution to act as promoters of inclusion and civic integration, especially in value diverse contexts.

c) Policing minority rights and duties

Conflicts frequently occur when state-enforced human rights clashes with the opposing cultural or religious obligations (Parekh 2001, 109–115). For example, liberal protections for sexual and gender freedoms may conflict with customary practices for family honor, religious modesty, or communal discipline to create social order. When these conflicts arise, police are caught between enforcing universally adopted legal standards of justice and weighing them against community-based moral expectations. For example, in France, laws prohibiting religious symbols in schools are seen by many in the Muslim community to be targeting Islamic identity and violating religious duty (Bowen 2007). In India, personal laws, contingent on religious affiliation, further complicate policing practices, especially in family law regarding marriage, custody, or inheritance (Agnes 2011, 45–78). Police are routinely criticized for being either too lenient or overzealous depending on the political moment and the majority group's religious dynamics (van der Veer 2004).

7. **Normative conflicts in policing reform**

Bringing rights-centered policing to communities operating with duty-centered moral systems raises difficult normative challenges. When the laws of international human rights enter communities in which there are entrenched moral systems typically focused on the collective good or collective duty, there is likely to be a clash. In these situations, local authorities and police forces will be caught between two competing moral frameworks. This section uses comparative case

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studies from Nigeria, Egypt, and India to explore these tensions and demonstrates the operational and moral dilemmas police forces experience in the face of competing conceptions of justice.

7.1. *Nigeria: customary law vs. human rights enforcement*

In Nigeria, there has been records of considerable conflict between customary law and international human rights laws, creating challenges for police officers responsible for policing human rights there[6]. Customary laws in several Nigerian communities focuses much on communal harmony, the authority of ancestors, and fulfilling social duties (Elias 1956). In contrast, international human rights law has always emphasized individual rights.

For example, trying to address female genital mutilation, a widespread practice in some communities in Nigeria, faced significant backlash (Shell-Duncan et al. 2017). Local authorities associate female genital mutilation with their cultural heritage, viewed police investigations and interventions as implementing foreign identities and values. The Nigerian national police faced challenges trying to enforce national law from the human rights perspective in these communities and build positive relationships with them (Alemika 1999). Unfortunately, interventions did not succeed in changing cultural norms, while further instilling a divide between communities and law enforcement.

In these contexts, local populations often view the enforcement of human rights as an infringement on cultural identity (Nwauche 2010, 37–63). Police forces in these situations were seen as external actors. This undermined their legitimacy and ability to effectively enforce the law. Their inability to partner with local leaders made matters even worse, contributing to a heightened resistance against policing strategies. This case demonstrates the necessity for reform strategies to be culturally embedded and that engage local moral authorities while also respecting fundamental human rights. Crucially, however, the failure of top-down enforcement in Nigeria should not be read as a vindication of female genital mutilation or other practices that inflict direct bodily harm on individuals, particularly children and women. It is instead a failure of strategy, not a failure of the underlying rights norms.

[6] *Mojekwu v. Mojekwu*. 1997. 7 NWLR (Pt 512) 283 (Nigerian Court of Appeal).

7.2. *Egypt: gender justice and Sharia-based policing*

In Egypt, the role of *Sharia* law in shaping the legal and social context is profound. Rights-based policing there focused on supporting women's rights often comes into conflict with cultural perspectives that uphold traditional interpretations of Islamic law (Berger and Sonneveld 2010, 51–88). The rights of women to bodily autonomy, protection from domestic violence, and equality before the law, are often in conflict with dominant masculinities that view a woman's value primarily within the family structure (Al-Sharmani 2013). While international human rights frameworks support women's rights and gender-based violence, local religious leaders and communities often view these efforts as an infringement on their religious beliefs. When police respond to situations of domestic violence or attempt to protect women from early marriage, the police are often accused of undermining the religious framework.

In certain examples, police officers in Egypt entered the cultural conflict, attempting to juggle human rights with the philosophy of the communities (Cairo Misdemeanor Court 2020). Conservative elements in society may assert that outside interventions advocating on behalf of women's rights represent western impositions of Islamic values, and thus, police agencies are stuck between a rock and a hard place. The idea of imposed norms generates opposition, especially in communities with heavily entwined religious identities and moral authority. The Egyptian example helps illustrate that gender justice initiatives must navigate theological legitimacy and cultural appropriateness as to not be dismissed as legal imperialism.

7.3. *India: caste, custom, and rights-based policing*

Policing in the cases concerning caste-based discrimination in India offers a unique challenge to those who advocate for rights-based policing. The Indian Penal Code, alongside specific acts pertaining to the protection of civil rights, criminalizes discrimination on the basis of caste[7]. However, traditional caste-based customs continue to exist in rural communities. Practices, such as untouchability and hierarchical

[7] India. 1860. *Indian Penal Code*. Act No. 45 of 1860. s. 153A.

India. 1955. *Protection of Civil Rights Act*. Act No. 22 of 1955. s. 3. India. 1989. *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act*. Act No. 33 of 1989, ss. 3(1)(x), 3(1)(xi)

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discrimination, remain well-established in those communities (Mendelsohn and Vicziany 1998). The national laws and policing efforts aimed at enforcing the rights of marginalized groups often meet heavy resistance from local communities, who consider this caste system as an integral part of their social fabric (Human Rights Watch 1999).

For example, when police forces respond to incidents of caste-based discrimination or violence, they face hostility from local, upper-caste communities who are concerned that such policing intervention is a challenge to the existing social order (Supreme Court of India 1993; Bombay High Court 2010; Teltumbde 2010). This conflict between the rights of individuals granted under Indian law and the cultural beliefs surrounding caste continues to be a challenge to Indian policing efforts. For Indian law enforcement, the challenge emerges not only in affirming anti-discrimination law, but also in re-establishing trust with historically marginalized groups. Dalits, for example, have been found to be socially alienated from police or at least do not feel that law enforcement is able to safeguard them or their rights (Supreme Court of India 2018). Therefore, when rights-based approaches are offered in these societies, they are viewed as a type of intervention by individuals with limited insight of the complexities of local caste hegemonies, leading to mistrust and resistance from others. This case study from India highlights the importance of culturally literate policing and engagement with community-specific histories of exclusion.

8. **Resilience and relevance of customary policing models**

8.1. *Why people trust informal justice systems*

Due to their cultural embeddedness and continuity over time, informal justice systems may continue to have a strong and important claim to trust in many communities. These systems are legitimate because they are seen as versions of dispute resolution consistent with the values, norms, and traditions that societies have relied upon for generations (Merry 1988, 869–896). In a number of areas, tribes, village panchayats, or religious courts are thought to have the most legitimacy in resolving disputes, as they reflect the shared history and customs of the community (Galanter 1981, 1–47).

These systems are also uniquely personalized, relying upon someone with a certain degree of authority or respect from the

community to decide a quote or to provide an explanation of why a particular result was appropriate in the situation. For example, in tribal societies, the members have collective faith in the reasoned basis of decisions made by elders or chiefs, just as those elders and chiefs have a vested interest in resolving disputes fairly, while at the same time maintaining harmony and a good social world for their community. This type of local ownership creates a sense of procedural legitimacy to the result of conflict resolution or the moral correctness of what the elders or authorities believed was fair (Fikentscher 1991).

In addition, these systems are usually more available to individuals who may not have the capacity or knowledge to engage with formal systems of justice. Accessibility is especially salient in rural or other marginal contexts where legal institutions are either corrupt, ineffective, or simply far away. For example, in India, for many rural communities, panchayats (village councils) are the principal means of justice, not because these are the culturally preferred means but because they are available and cheap (Konoorayar 2014). Informal systems often allow for local solutions to local problems and provide a level of legitimacy, which is often missing in formal system of the state. Because informal systems are local, accessible, and culturally familiar, they also become the preferred modes of operation within communities that generally feel underserved by formal legal systems.

8.2. *Benefits of informal justice systems*

a) Speed and efficiency

Informal justice systems exist due to their ability to produce results much quicker and more responsively than formal legal systems. Formal legal systems, depending on the circumstances, may take months or even years, constrained by formal legal proceedings of a court (Tamanaha 2011, 1–17). In many cases, people cannot afford to wait months or years for a court decision, particularly as the urgency of the dispute increases due to the nature of the dispute. For instance, in Bangladesh, *shalishs* (village councils) are a common type of informal justice system that people use to resolve disputes, such as property disputes, family issues, or theft (Hoque and Zarif 2020, 35–50). There is no formal legal process, so *shalish* is a viable alternative because the formal legal system can be very slow or overburdened (Hoque and Zarif 2020, 35–50). Since a *shalish* can sometimes call a meeting and resolve an issue in one day, it is a much quicker way for everyone to find relief.

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People who rely on informal systems do so because the process will be faster than seeking recourse in a state-run court (Chirayath et al. 2005). This efficiency is one of the primary reasons that informal justice remains a preferred choice, despite its potential to contradict formal human rights law. While speed does not guarantee fairness, it enhances perceived legitimacy in contexts where delay equates to denial.

b) Cultural acceptance and social cohesion

In addition to their speed, informal justice systems are often culturally accepted because they are embedded within the society's historical and cultural framework (Merry 1988, 869–896). Many communities feel more comfortable using these systems because they follow local customs that have developed over generations. As a result, the findings of tribal elders, religious leaders, or community councils are not merely legal findings, but a means of preserving the fabric of the community. For instance, in many areas in Africa, communities continue to use tribal courts that are run by elders and community leaders. These systems are trusted because they are an extension of the community's identity (Chirayath et al. 2005). In countries like Kenya, where customary law is a form of practice in the rural setting, informal justice is often perceived as the most credible method of resolving disputes (McConkie 2024). These communities often elect the leaders, and these leaders are believed to be attuned, within their local context, capable of making decisions both culturally appropriate and consistent with local value systems.

c) Why these traditional systems can't be ignored in reform discussions

The normative and institutional imprint of traditional justice systems is deep and enduring. They exist within the fabric of many societies, especially in rural and marginalized places (Tamanaha 2011, 1–17). They are not just alternate means of attaining justice, but are, in many instances, the only means by which an individual interacts with laws and authority. In Africa, Asia, and the Middle East, traditional systems of justice are still central to people's lived experience of justice and social order (Ahmad and von Wangenheim 2021, 228–239; Kaime 2004, 271–273). Any discussion on legal reform, whether it be bringing the traditional justice system into formal state institutions or developing practices within traditional institutions to develop legality in

pluralistic societies, would not be realistic by ignoring or dismissing traditional systems of justice

Lawmakers and human rights supporters can work to reconcile traditional justice systems with international human rights standards by recognizing and valuing their traditional roles. In doing this, a delicate balance will be achieved, in which the law will encapsulate cultural practice but will not sacrifice fundamental rights. Reform must progress through normative translation not by erasing cultural law. To achieve rights-informed cultural practices effectively, we must operationalize rights within a culturally relevant framework, providing legitimacy and protection.

9. **Hybrid approaches to justice: bridging universalism and cultural legitimacy**

To try to make justice systems more congruent with the experienced moral worlds of diverse communities, some governments and organizations have attempted to adopt hybrid systems, merging rights-based approaches that emerge from international human rights law with duty-based frameworks emerging from local customs (Tamanaha 2011, 1–17). These hybrid experiments have been illustrating the possibilities and challenges of legal pluralism (Griffiths 1986, 1–55). The cases examined below illustrate both the aspiration and the structural difficulty of genuine hybridization, and inform the conditions identified at the close of this section under which hybrid models may more reliably protect individual rights. South Africa, Indonesia, and Jordan, for example, have all engaged, to some extent, in bridging those systems and creating hybrids that honor human rights and ethically adopt cultural practices for justice. These efforts have, however, highlighted how challenging this process can be, especially when local customs or practices are inconsistent or in conflict with the international standard of human rights.

a) South Africa: customary law and constitutional equality

Among the most examined cases of this legal incorporation can be found in South Africa. Constitutional reforms following apartheid recognized customary law and gave it equivalent status as common law, provided it did not conflict with the Constitution (Kaime 2004,

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271–273). However, the fact of recognizing customary law often came at the cost of women's rights (Constitutional Court of South Africa 2004). For example, in rural areas, matters of land and inheritance are routinely determined by traditional authorities who would enforce customary law and local norms which arguably violate constitutional principles of gender equality[8]. While the state originally sought to apply a duty-oriented approach, the lack of consistent oversight meant that discriminatory practices persisted under the guise of cultural legitimacy (Oomen 2005, 164–234). The example demonstrates the tension of legal pluralism and substantive equality, particularly when customary authority is exempt from constitutional scrutiny.

b) Indonesia: *Adat, Sharia,* and human rights

In Indonesia, the government tried to harmonize *adat* (customary) law with human rights, particularly in Aceh, where *Sharia*-based rules were introduced (Republic of Indonesia 2006). While these measures were meant to preserve cultural practices, they resulted in practices such as public caning, drawing criticism for violating human rights protections against cruel treatment (Amnesty International 2016). The Indonesian experience implies that hybridization of traditional and human rights law puts duty to community above individual human rights and can exacerbate inequality, particularly related to gender and minority status. These developments in Indonesia illustrate how hybridization can perpetuate illiberal practices rooted in cultural legitimacy over normative protections.

c) Jordan: tribal mediation and gendered justice

Similarly, Jordan's experience with tribal dispute resolution systems, which emphasize duties to family and community, revealed the difficulty of blending local customs with formal legal frameworks (Furr and Al-Serhan 2008, 17–34). Tribal mediation, encouraged to reduce court backlogs, sometimes undermined women's rights in family disputes, particularly in cases of domestic violence or "honor crimes" (Johnstone 2015). While these mechanisms were intended to enhance access to justice, they often reinforced patriarchal norms and discouraged victims from seeking formal legal recourse.

[8] *Shilubana and Others v. Nwamitwa*. 2008. (CCT 03/07) [2008] ZACC 9.

d) Lessons and limitations of hybrid models

To summarize, a pattern of contradiction and complexity arises from these cases. On the one hand, considering duty-based norms can enhance the local relevance of justice processes and facilitate participation (Claassens and Ngubane 2008, 154–183). On the other hand, those same features can create obstacles to reform when local norms may conflict with universal human rights (Claassens and Ngubane 2008, 154–183). At the heart of these tensions is a disagreement between the liberal logic of individual entitlements and the communitarian logic of relational obligations. Both may offer important insights into justice processes, but integrating a co-existent framework raises the level of complexity. Moreover, as noted in these cases, integrating both could lead to revolutionary changes as well as a certain level of ambiguity, selective justice, or even a return to the status quo. The South African, Indonesian, and Jordanian cases collectively demonstrate that, in absence of robust safeguards, hybrid models consistently permit the cultural to override the normative: customary authority displaces constitutional equality, religious enforcement displaces individual protection, and community mediation displaces victims' access to formal recourse. This is not a marginal risk but a pattern, and it demands an explicit acknowledgement that the current record of hybridization, far from representing a promising middle path, reflects a structural tendency for individual rights to be the currency in which cultural accommodation is purchased. Scholars who remain critical of the hybrid approach, including Donnelly (2013) and Mutua (2001), have consistently cautioned that framing cultural accommodation as compromise risks masking the capitulation of rights under the language of pluralism.

Understanding when and how such blending works requires not just technical legal expertise, but a deep sensitivity to the local context, power dynamics, and the lived experiences of those the law is meant to protect. Based on the cases examined, this paper proposes that genuinely rights-protective hybrid models must satisfy at least four conditions: first, a clear hierarchy of norms that treats non-derogable rights as a floor beneath which no local practice may reach; second, participatory reform processes that include, in particular, the voices of those who are most frequently harmed by customary practices, women, minorities, and caste-marginalized persons; third, robust and independent oversight mechanisms capable of identifying and sanctioning the instrumentalization of cultural legitimacy by power-holders; and fourth, a commitment to

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what An-Na'im (1990) terms internal cultural legitimation, which seeks to demonstrate that rights-equivalent protections are available within the moral vocabulary of the tradition itself, rather than imposed from outside it.

10. **Limits of rights universalism in local contexts**

Certain human rights, particularly those of women and religious freedom, conflict frequently in societies where moral authority is based on duty-centered traditions (An-Na'im 1990). This turmoil does not arise from a lack of knowledge or lack of belief in international norms, but rather from a sense of duty towards society rooted in cultural, moral and religious beliefs.

Women's rights, in particular, are often most contested in the areas of marriage, inheritance, and control over their bodies. For example, in Afghanistan, attempts to implement the law prohibiting forced marriages and domestic violence are almost always opposed by tribal elders and religious leaders alike who found these initiatives to be against their traditions of patriarchal authority (Human Rights Watch 2012). The 2009 Shiite Personal Status Law, for example, allowed husbands to withhold sustenance from wives who refused sexual relations (Islamic Republic of Afghanistan 2009, art. 132). Such laws have drawn protests from the international community, but indicate that in Afghanistan, religious frameworks supported norms are prioritized over individual autonomy. Similar conflicts exist over women's rights in Nigeria because of the parallel application of customary law, *Sharia* law, and federal law[9] (Amnesty International 2012). The coexistence of different legal philosophies leads to contradictory results across jurisdictions, especially related to issues of gender equality and personal status.

Religious freedom also frequently becomes a source of conflict. For example, in Egypt, Christian converts from Islam have suffered both formal and informal oppression despite the constitutional protection of religious freedom (International Christian Concern 2025; Morning Star News 2025; Brink 2025). Courts and bureaucracies frequently deny identity card changes, effectively leaving converts stateless in their own country (Fayez 2025). This administrative denial exhibits a deeper

[9] *Amina Lawal v. State of Katsina*. 2003. Sharia Court of Appeal, Katsina State, Nigeria, September 25.

normative resistance to religious pluralism, where identity is strictly regulated by communal and theological limitations.

These examples and cases raise an important and persistent question in the human rights discourse: should rights be applied universally, or are there opportunities to adapt or interpret them through locally legitimate moral vocabularies to increase acceptability? Scholars like Abdullahi An-Na'im argue that unless rights are adapted and interpreted through culturally legitimate contexts, they will always emerge as imposed rights and create backlash (Sidahmed 2011). This is an important insight, but it must be carefully distinguished from the position that cultural acceptability can ever justify the violation of non-derogable rights. The internal legitimation of rights is a strategy for their more effective realization; it is not a process by which those rights may be qualified or extinguished. As Donnelly (2013) argues, the universality of human rights does not require cultural uniformity in their expression or enforcement, but it does set an irreducible minimum below which no cultural argument provides legitimate justification. The task, therefore, is not to choose between universalism and cultural legitimacy, but to pursue a rights-protective pluralism that holds both commitments simultaneously, insisting on the floor while allowing diversity in the architecture built above it.

Conclusion

The present study has explored the consequential normative tensions that exist between a rights-based policing model grounded in the liberal democratic tradition and a duty-based moral framework that are common to many tradition-based societies. Even though international human rights framework puts a greater emphasis on individual rights and protection, justice is often understood through the perspective of relational obligations, social harmony, and moral responsibility in societies around the world. These distinctions between the frameworks are not just abstract; they are an essential part of the context in which policing is understood, practiced, and contested.

This study has highlighted it through a creative and multi-disciplinary analysis of philosophical traditions, legal instruments and settled case law. Brief case studies of Nigeria, Egypt, and India, has showcased that the imposition of universal human rights framework very often meet with resistance for a range of reasons. Informal justice

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systems, such as the jirga, panchayat, and religious courts, persist not in spite of international law, but because they resonate with local understandings of legitimacy, authority, and justice.

Rather than framing this difference as a binary between universality and relativism, this paper argues that rights-based and duty-based frameworks occupy different positions along a normative continuum, and that the central challenge for reform is not to choose between them but to develop strategies for embedding non-derogable rights within culturally legitimate moral frameworks. Where informal systems provide accessibility, familiarity, and social cohesion, those assets should be engaged, not discarded. But where those same systems systematically exclude or harm individuals, particularly women, minorities, and the socially marginalized, reform must insist upon the floor of rights protection, even as it remains sensitive to context in everything built above it.

In the end, the question is not whether rights or duties should prevail, but how justice can be reimagined in ways that are both normatively principled and culturally resonant. By situating police reform at the intersection of law, culture, and philosophy, this paper invites scholars, policymakers, and practitioners to move beyond universalist prescriptions and toward context-sensitive strategies that embed rights within existing moral frameworks. Only then will policing be something other than a tool for enforcement and be a real vehicle for justice in morally plural societies.

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Yoruba indigenous religion (*Ìṣẹ̀ṣe*) and the right to freedom of religion: Intersecting human rights and epistemicide perspectives

La religión indígena Yoruba (*Ìṣẹ̀ṣe*) y el derecho a la libertad religiosa: Intersecciones entre los derechos humanos y las perspectivas del epistemicidio

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Summary: Introduction. 1. Conceptual frameworks. 1.1. Human rights. 1.2. Indigenous knowledge. 1.3. Epistemicide. 2. *Ìṣẹ̀ṣe:* a religion and knowledge system. 3. Systemic discrimination and marginalization: evaluating human rights violations against *Ìṣẹ̀ṣe* practitioners. 4. From marginalization to epistemicide: deconstructing the erasure of *Ìṣẹ̀ṣe* epistemology. Conclusion. References.

Abstract: *Ìṣẹ̀ṣe* is the indigenous religion and spiritual heritage of the Yoruba people in South-West Nigeria. While existing literature has examined the marginalization of indigenous faiths through a human rights lens, this paper argues that such a framework cannot fully address the systemic roots of this discrimination. This is because human rights discourse typically focuses on religious freedom, failing to account for *Ìṣẹ̀ṣe's* broader identity as a comprehensive indigenous knowledge system. This paper contends that in post-independence Nigeria, *Ìṣẹ̀ṣe* has primarily suffered from epistemicide -the systematic silencing and delegitimization of indigenous ways of knowing. By reframing the challenges confronting *Ìṣẹ̀ṣe* practitioners as a matter of epistemic justice, this paper moves beyond simple legal protections. It emphasizes that public policies should be anchored in an analytical framework that recognizes *Ìṣẹ̀ṣe* as a significant component of Yoruba epistemology. Such

an approach provides the essential legitimacy to indigenous practices, serving as a catalyst for federal and state governments to move beyond rhetoric while providing substantive protection for the religious and epistemic rights of *Ìṣẹ̀ṣe* practitioners.

Key words: *Ìṣẹ̀ṣe*, discrimination, human rights, indigenous knowledge, epistemicide, public policy, epistemic justice

Resumen: El *Ìṣẹ̀ṣe* es la religión indígena y el patrimonio espiritual del pueblo yoruba en el suroeste de Nigeria. Si bien la literatura existente ha examinado la marginación de las fes indígenas a través de la lente de los derechos humanos, este artículo sostiene que tal marco no puede abordar plenamente las raíces sistémicas de esta discriminación. Esto se debe a que el discurso de los derechos humanos suele centrarse en la libertad religiosa, sin tener en cuenta la identidad más amplia del *Ìṣẹ̀ṣe* como un sistema integral de conocimiento indígena. Este trabajo sostiene que, en la Nigeria posindependiente, el *Ìṣẹ̀ṣe* ha sufrido principalmente de epistemicidio: el silenciamiento y la deslegitimación sistemática de las formas indígenas de conocimiento. Al replantear los desafíos que enfrentan los practicantes del *Ìṣẹ̀ṣe* como una cuestión de justicia epistémica, este artículo va más allá de las simples protecciones legales. Enfatiza que las políticas públicas deben anclarse en un marco analítico que reconozca al *Ìṣẹ̀ṣe* como un componente significativo de la epistemología yoruba. Tal enfoque proporciona la legitimidad esencial a las prácticas indígenas, sirviendo como catalizador para que los gobiernos federales y estatales trasciendan la retórica y brinden una protección sustantiva a los derechos religiosos y epistémicos de los practicantes del *Ìṣẹ̀ṣe.*

Palabras clave: *Ìṣẹ̀ṣe*, discriminación, derechos humanos, conocimiento indígena, epistemicidio, política pública, justicia epistémica.

Introduction

The Yoruba are a prominent African ethnic group with a significant presence in Nigeria, the Benin Republic, and Togo. Following the transatlantic slave trade, a substantial number of Yorubas settled in Sierra Leone as returnees (Anderson 2020, 192), while others established enduring communities in Brazil, Cuba, Haiti, Trinidad and Tobago, and throughout the Caribbean (Cohen 2002, 19; Ofuasia 2024, 165; Udo 2020, 27). This paper focuses specifically on the Yoruba within Nigeria, where they constitute one of the nation's major ethnic groups. In 1995, the military regime of General Sani Abacha divided Nigeria into six geopolitical zones for administrative convenience: North-East, North-West, North-Central, South-East, South-South, and South-West (Okeke 2017, 2). The Yoruba predominantly occupy the South-West zone, comprising Lagos, Oyo, Ogun, Osun, Ekiti, and Ondo states, though they are also found in the North-Central states of Kogi and Kwara. Religious life in South-West Nigeria is diverse, encompassing Christianity, Islam, and indigenous religion (Janson 2021, 1). *Ìṣẹ̀ṣe* represents a localized manifestation of African Indigenous Religions (AIRs), embodying the multifaceted ancestral traditions and spiritual cosmologies of the Yoruba.

According to Lugira (2009, 48), AIRs are faiths that evolved within and originated from the continent. These religions are characterized by intergenerational transmission, as beliefs and practices are passed down through lineage rather than institutional conversion. Owing to the absence of specific historical founders, the precise origins of AIRs remain difficult to date (Awolalu 1976, 2; Mbiti 1975, 14). Rather, scholars suggest they evolved from the collective efforts of African ancestors to address existential questions and the mysteries of the universe (Lugira 2009, 48). The spiritual essence of AIRs is deeply rooted in the connection between African peoples, nature, and their environment. Consequently, upholding traditional norms and cultural values is essential for preserving AIRs as a spiritual heritage. Unlike religions that have specific sacred books, AIR doctrines are not traditionally codified in a single text like the Bible or Quran. However, significant documentation exists, such as the Odu Ifa (Ifa Corpus) in Yorubaland. Scholars, most notably Abimbola (1975, 1976), identify the Odu Ifa as the foundational knowledge system of *Ìṣẹ̀ṣe*, providing a comprehensive framework for ethical, historical, philosophical, and political discourse. Accordingly, the Odu Ifa constitutes an integral component of the broader indigenous knowledge system embedded within *Ìṣẹ̀ṣe*.

Research conducted by Nolte et al. (2018, 30) indicates that *Ìṣẹ̀ṣe* practitioners account for a mere 1.3% of the South-West Nigerian population, while Christians and Muslims represent 66.7% and 31.7%, respectively. This statistical decline positions *Ìṣẹ̀ṣe* as a minority religion, subject to significant social discrimination. The marginalization of *Ìṣẹ̀ṣe* is often driven by Abrahamic perspectives that reduce the tradition to derogatory categories like barbarism and idol worship, stripping it of its cultural complexity (Aderibigbe 2022, 29; Olasupo 2013, 20). Despite the official declaration of *Ìṣẹ̀ṣe* Day as a public holiday in several South-Western states, institutional marginalization persists. Government policies often ignore the cultural and spiritual significance of indigenous religions, further excluding practitioners from the socio-political sphere (Akin-Otiko 2019, 34; Olanrewaju 2024, 1). This exclusion raises critical concerns regarding human rights protection and socio-political inclusion. Beyond religious bias, the marginalization of *Ìṣẹ̀ṣe* represents epistemicide -the systematic suppression or silencing of indigenous knowledge systems. In this context, *Ìṣẹ̀ṣe* can be conceptualized as both a spiritual cosmology and a vital repository of indigenous knowledge, necessitating protection from both state and non-state actors.

Adewale (1993, 22) notes that *Ìṣẹ̀ṣe* inherently recognizes fundamental rights, including the rights to property, existence, worship, and expression, as well as the state's obligation to provide security and education. While scholars such as Ilesanmi (2001), Nwauche (2008) and Ogbuehi (2017) have examined the marginalization of Nigeria's minority religions, their work rarely focuses on *Ìṣẹ̀ṣe*. Conversely, a growing body of research explores African indigenous religions through the lens of epistemicide and African epistemologies (Falola and Griffin 2021; Mokhoathi 2017). Within this field, Eesuola and Falaiye (2021), and McElwaine (2019) specifically analyze *Ìṣẹ̀ṣe*; however, they do not conceptualize the intersection between epistemicide and human rights. Thus, there remains a dearth of literature connecting epistemic deconstruction to the human rights violations faced by *Ìṣẹ̀ṣe* practitioners. This paper addresses this gap by framing the socio-political marginalization of *Ìṣẹ̀ṣe* as both a human rights violation and an act of epistemicide. Following this introduction, the study establishes its conceptual frameworks and examines *Ìṣẹ̀ṣe* as a dual system of religion and knowledge. It then discusses specific human rights violations before analyzing how epistemicide undermines *Ìṣẹ̀ṣe*. The paper concludes with a summary of the analysis.

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1. **Conceptual frameworks**

1.1. *Human rights*

The importance of human rights as a legal and conceptual framework for upholding dignity, equity, and justice is foundational to modern governance. These are the fundamental rights and freedoms inherent to every individual by virtue of their humanity (Donnelly 2005, 2; Moyn 2018, 121; van der Rijt 2017, 1322). The Universal Declaration of Human Rights (UDHR), adopted by the United Nations in 1948, remains the definitive global blueprint for these protections. Rahman (2020, 6) emphasized that the UDHR is not a legally binding treaty. However, it established the essential normative framework that has inspired numerous international laws and national constitutions. The freedom of religion and belief is a fundamental human right enshrined in various international and regional treaties, including the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), and the African Charter on Human and Peoples' Rights (1981).

Article 18 of the Universal Declaration of Human Rights (1948) specifically states that:

> Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change their religion or belief, and freedom, either alone or in community with others, in public or private, to manifest their religion or belief in teaching, practice, worship, and observance

Similarly, Article 18 of the International Covenant on Civil and Political Rights (1966) states that:

> Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of their choice, and freedom, either individually or in community with others, in public or private, to manifest their religion or belief in worship, observance, practice, and teaching.

According to Ekhator (2015, 253) and Olanrewaju (2026, 13), as a signatory to international human rights treaties, Nigeria has domesticated these principles by incorporating them into its national legal framework. The primary authority for the protection and promotion of human rights is found in Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria (as amended). Sections

33 to 46 of this chapter outline Fundamental Rights, including the rights to life, personal liberty, fair hearing, and private life, as well as the freedoms of thought, religion, expression, assembly, and movement, and the right to freedom from discrimination.

Specifically, Section 38(1) of the Constitution stipulates that:

> Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

The constitutional provision for religious freedom in Nigeria implies that the state recognizes this as a fundamental human right. This framework places a significant obligation on federal, state, and local governments as duty bearers to protect and promote these rights for all citizens. Given that Nigeria is both a multi-ethnic and multi-religious nation, Section 38 of the Constitution theoretically shields all faiths from discrimination and provides a legal pathway for anyone whose rights are infringed upon to seek redress in court (Tanimu and Raji 2020, 10). However, a stark gap exists between constitutional theory and lived reality. Despite these protections, indigenous religions as minority faiths suffer from persistent social discrimination and political marginalization (Olanrewaju 2024, 1). As previously noted, the discrimination against *Ìṣẹ̀ṣe* is two-fold: it is triggered by the religious intolerance of Abrahamic adherents at a societal level and sustained by exclusionary government policies at an institutional level. These combined pressures result in a direct violation of the religious freedoms of *Ìṣẹ̀ṣe* practitioners (Hanafi 2021). Within this context, this paper utilizes a human rights framework to critically analyze the systemic exclusion of *Ìṣẹ̀ṣe*.

1.2. *Indigenous knowledge*

Indigenous knowledge entails the study of the source, nature, and purpose of knowledge within specific historical and cultural contexts. Falola (2022, 515) explains that indigenous knowledge systems are ancient, communal systems of understanding passed down through generations. Unlike Western scientific paradigms, which often compartmentalize data into distinct disciplines, indigenous knowledge systems integrate ecological, spiritual, and

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social dimensions into a holistic worldview. Preserved and shared through oral traditions such as storytelling and ritual practices (Yusuf and Olusegun 2015, 1), this intergenerational legacy constitutes a foundational knowledge system that ensures cultural values remain central to a community's identity. It therefore provides the epistemic basis for community interactions with the environment, ensuring long-term sustainability (Yusuf and Olusegun 2015, 1-2). Analyzing a group's epistemology, defined as their unique way of perceiving and constructing knowledge is fundamental to understanding their entire knowledge system. Such analysis serves to justify the validity and internal logic of their specific intellectual traditions. By extension, this scholarly approach ensures that indigenous modes of thought are evaluated on their own terms rather than through the restrictive lens of Western paradigms.

This paper constructs indigenous knowledge through a spiritual lens, asserting that indigenous religion is itself a rigorous and significant way of knowing. In this context, knowledge and spirituality are inseparable; they form a unified worldview where the sacred is woven into the fabric of everyday life (Fadipe 1970, 250; Idowu 1962, 5; Mbiti 1975, 9). Indigenous traditions typically view the natural world as a sentient entity animated by ancestral spirits or a universal life force. As Fadipe (1970, 1-19) explains, this spiritual connection provides the foundation for ecological stewardship as land, water, plants, and wildlife are regarded not as mere commodities, but as sacred resources to be protected. Hence, indigenous knowledge system transcends its philosophical foundations, encompassing vast practical applications ranging from sustainable agriculture and complex herbal medicine to advanced forest management and climate adaptation strategies (Alade et al. 2015, 217; Nyong et al. 2007, 787; Oloruntoba et al. 2020, 1). In this regard, knowledge of medicinal plants, seasonal cycles, or weather patterns is transmitted through traditional means that reinforce a community's moral and spiritual obligations to the universe. Significantly, indigenous spirituality/religion acts as the ethical compass for the application of knowledge, ensuring that human survival remains in harmony with the environment.

1.3. *Epistemicide*

Central to the social discrimination and political marginalization of *Ìṣẹ̀ṣe* is the process of epistemicide, which systematically devalues indigenous knowledge. According to Santos (2014, 92) epistemicide is

the systematic destruction, silencing, or devaluation of indigenous knowledge systems, typically through the lens of colonialism or Western intellectual hegemony. This process is often facilitated by institutional mediums such as colonial education systems, where the language, history, and indigenous knowledge of the colonized are replaced by those of the colonizer. Marginalized groups are stripped of the conceptual frameworks needed to describe their own reality. Oloruntoba et al. (2020, 2) argue that, despite the end of colonial rule, most African countries, with only a few exceptions still rely on Western-style educational curricula. Nigeria is not an exception in this regard as its National Policy on Education (NPE) has historically prioritized Western-style curricula as the sole benchmark for modernity and development (Dada 2025, 20-21). By elevating Eurocentric academic standards as universal truths, dominant powers delegitimize alternative epistemologies such as oral traditions, local ecological wisdom, and communal philosophies. As a result, indigenous knowledge is often subordinated and reduced to the status of mere superstition or dismissed as primitive folklore. Santos (2014, 149) emphasizes that epistemicide creates a state of cognitive injustice where the oppressed whose knowledge system is being annihilated is forced to view itself through the distorting lens of the oppressor. This results in profound cultural alienation and the erasure of human cognitive diversity, leading to a fundamental failure to recognize the numerous ways through which diverse groups make meaning of their existence.

The intersection of epistemicide and religion is most apparent in the manner in which dominant monotheistic frameworks, primarily Christianity and Islam have historically dismantled and demonised indigenous spiritual knowledge systems. Through trans-Saharan trade and colonial missions, propagators of these faiths were able to dismiss native cosmologies, ancestral veneration, and traditional healing as barbaric, paganistic, or demonic (Aderibigbe 2022, 29; Olasupo 2013, 20; Olupona 2014, 25). By replacing local spiritual epistemologies with foreign religious conceptions, these dominant forces ensured that the sacred languages, oral liturgies, and holistic worldviews of the marginalized were either subjugated or driven underground (Falola 2022, 517). This religious hegemony forced a cognitive shift, compelling indigenous peoples to distrust their own cultural intuitions and metaphysical explanations of the world. As Aderibigbe (2022, 44) observed, the result is a state of profound spiritual alienation, where the divine is accessed almost exclusively through the conceptual lenses of Christian and Islamic doctrines. Consequently, *Ìṣẹ̀ṣe* beliefs and practices are viewed as obstacles to civilization or salvation rather than

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valid ways of understanding the universe. This effectively stripped these *Ìṣẹ̀ṣe* traditions of their intellectual and moral validity. In this paper, epistemicide is contextualized through the specific silencing and subjugation of *Ìṣẹ̀ṣe* (Yoruba indigenous religion), a theme explored in detail in the subsequent sections.

2. *Ìṣẹ̀ṣe*: A religion and knowledge system

Ìṣẹ̀ṣe is the foundational term for the indigenous religion of the Yoruba, representing a holistic way of life that predates the arrival of foreign monotheistic faiths in West Africa. While there is no scholarly consensus on its specific origins, Johnson (1921, 6) argues that the Yoruba migrated from the East (Upper Egypt), bringing ancient customs that evolved into their current indigenous belief system. *Ìṣẹ̀ṣe* beliefs and practices are fundamental components of the Yoruba knowledge system, contributing significantly to the totality of Yoruba epistemology (McElwaine 2019, 44). These age-old traditions manifest in the diverse lived experiences of practitioners, expressing the unique ways of knowing embedded in their spiritual and religious inclinations. According to Idowu (1962, 202), Yoruba cosmology is a spiritual system centred on the veneration of Olodumare (the Supreme Being), Orishas (deities or divine intermediaries), spirits, and ancestors. *Ìṣẹ̀ṣe* is deeply intertwined with ancestral veneration *(Egungun)* and the appeasement of deities that embody natural forces, such as the ocean, thunder, and iron. Prominent deities include Obatala, Orunmila, Sango, Ogun, Oya, Osun, and Esu. Scholarly estimates of the Yoruba pantheon vary, with some citing 201 (Elugbaju 2022, 112; Olupona 2011, 1) and others between 201 and 1,700 deities (Aderibigbe 2022, 34; Dopamu 1999, 7). A significant theological debate persists regarding the nature of *Ìṣẹ̀ṣe*. Scholars such as Adamo (2022, 5), Idowu (1962, 49), and Lucas (1948, 34) argue that its liturgical expressions reflect a form of monotheism directed toward one Supreme Being. Conversely, Bewaji (1998, 1-3), Fadipe (1970, 261) and Oguntoyinbo-Atere (2022, 414) contend that the adulation of numerous Orishas confirms that the religion is fundamentally polytheistic.

Worship and appeasement within *Ìṣẹ̀ṣe* are multifaceted, encompassing praise, prayers, songs, chants, dances, sacrifices, offerings, libations, and traditional sermons (Awolalu 1973, 11; Awolalu and Dopamu 1979, 121; Idowu 1962, 110; Ilesanmi 1991, 224; Oguntoyinbo-Atere 2022, 416). Practitioners congregate in local shrines and temple-like spaces for fellowship, consult with priests and oracles, and perform rites to honour their deities. Beyond designated

shrines, *Ìṣẹ̀ṣe* practitioners consecrate various elements of the natural and material world, including trees, mountains, palm fronds, and effigies (Oguntoyinbo-Atere 2022, 415). These sacred symbols serve as mediators in the spiritual relationship between the practitioner and Olodumare (the Supreme Being). While daily worship is common, large-scale communal gatherings are typically reserved for major events like Sàngó, Egungun and Ifa festivals (Oyedokun and Ajayi 2026, 61; Yusuf and Olusegun 2015, 4). Through these acts of appeasement and communal rituals, practitioners manifest their religious beliefs as profound symbolic expressions of their faith and heritage.

This paper conceptualizes *Ìṣẹ̀ṣe* not only as a religion subject to human rights violations but as a fundamental knowledge system that must be preserved. As an epistemology, *Ìṣẹ̀ṣe* serves as a profound repository of indigenous knowledge, representing the ancient spiritual and philosophical foundations of the Yoruba people (Abimbola 1975, 389; Abimbola 1976, 33) Far from being a static belief system, *Ìṣẹ̀ṣe* is a dynamic system of knowing that integrates history, philosophy, ethics, natural science, and environmental wisdom into a unified worldview (Abimbola 1976, 33; Falola 2022, 517). This knowledge is primarily transmitted through the Ifa Corpus (Odu Ifa), the intellectual foundation of Yoruba civilization. Historically, this transmission has been oral. The rigorous training required of Ifa priests ensures the accurate preservation of the Odu Ifá (the Ifá literary corpus), providing a reliable record of the culture's historical, philosophical, and moral essence. The Ifa Corpus comprises 256 chapters (Odu) consisting of 16 major and 240 minor Odus (Abimbola 1976, 26). Each Odu contains numerous poetic verses (Ese) that offer guidance on human existence and the natural world. Falola (2022, 520) observed that Ifa is the voice of Olodumare as interpreted by Orunmila, the Orisha of wisdom, divination, and witness to fate. The essence of Ifa lies in its ability to harmonize the spiritual and the material, providing a framework for problem-solving through both empirical observation and metaphysical insight (Falola 2022, 521). The Odu Ifa serves as a vital source of ethical guidance and spiritual instruction, directing practitioners on how to lead purposeful lives and navigate complex challenges. When individuals encounter significant existential or life challenges, they often consult a Babalawo (Ifa priest) or Iyanifa (Ifa priestess) for guidance (Abimbola 1976, 3; Eesuola and Falaiye 2021, 66). Utilizing specialized tools such as the opon Ifa (divination tray), opele (divination chain), and ikin ifa (sacred palm nuts), these practitioners provide spiritual solutions to their clients' problems (Abimbola 1976, 8-10). Essentially, this system functions as a sophisticated epistemological tool through which sacred knowledge is

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accessed, interpreted, and applied to human affairs. Recognized by UNESCO in 2005 as a Masterpiece of the Oral and Intangible Heritage of Humanity (Yusuf and Olusegun 2015, 8), Ifa remains a resilient tradition that challenges Western notions of literacy by proving that oral cultures possess rigorous, systematic ways of documenting the universe.

3. **Systemic discrimination and marginalization: evaluating human rights violations against *Ìṣẹ̀ṣe* practitioners**

The recent resurgence of *Ìṣẹ̀ṣe* represents a powerful cultural and intellectual pushback against decades of systemic marginalization. This shift is most evident in the formal recognition of *Ìṣẹ̀ṣe* Day as a public holiday in several South-Western states (Olufemi 2025). However, while this demonstrates the resilience of the faith, it has done little to dismantle the deep-seated social discrimination confronting its practitioners. Stigmatization often stems from the perceptions of other religious groups, who frequently label *Ìṣẹ̀ṣe* beliefs as archaic or barbaric, and its followers as ritualists or idol worshippers (Aderibigbe 2022, 29; Olasupo 2013, 20). These stereotypes permeate everyday life as *Ìṣẹ̀ṣe* practitioners constantly encounter social prejudices that challenge their religious identity. These discriminatory practices manifest in the condemnation of traditional rites, the destruction of shrines, acts of violence during festivals, and the denial of employment opportunities (Abe 2024; Hanafi 2021; Olasupo 2013, 29; Oyekola 2023).

The struggle for recognition by *Ìṣẹ̀ṣe* practitioners frequently triggers religious clashes in South-West Nigeria, particularly with adherents of Abrahamic faiths. A prominent example occurred in July 2023 in Ilorin, Kwara State, where Muslim groups threatened *Ìṣẹ̀ṣe* practitioners to prevent them from holding their annual festival (Oyekola 2023). When these threats were rebuffed and the festival proceeded, a prominent *Ìṣẹ̀ṣe* leader, Abdulazeez Adegbola (Tani Olohun), was arrested and detained for months before being granted bail. In addition to physical confrontation, *Ìṣẹ̀ṣe* practitioners face systemic economic discrimination. Hanafi (2021) recounts a job interview where an applicant, upon identifying as an *Ìṣẹ̀ṣe* practitioner, was immediately questioned if he intended to initiate students into a secret cult. Although not explicitly cited as the reason for his rejection, the correlation between his religious identity and the subsequent denial of employment is evident. By exercising their constitutional right to freedom of religion, most *Ìṣẹ̀ṣe* practitioners face social

disadvantages and the loss of economic opportunities (Hanafi 2021). Such discriminatory practices not only undermine individual dignity but also incite communal violence, restrict freedom of movement, and marginalize *Ìṣẹ̀ṣe* practitioners within the broader socio-economic landscape (Hanafi 2021; Olasupo 2013, 29; Oyekola 2023).

The systemic discrimination and marginalization of *Ìṣẹ̀ṣe* practitioners represent a profound challenge to the protection of religious minorities in Nigeria. These practices not only erode social cohesion but also violate fundamental human rights enshrined in international treaties and Chapter IV of the 1999 Constitution of Nigeria (as amended). Fundamental to this issue is the principle of interdependence and indivisibility of human rights. A violation of religious freedom often triggers a cascade of other rights abuses. Section 33 (right to life): violated during violent communal clashes where *Ìṣẹ̀ṣe* practitioners have lost their lives (Hanafi 2021). Section 34 (right to dignity): compromised by using derogatory language and the pagan branding to dehumanize *Ìṣẹ̀ṣe* practitioners. Section 38 (freedom of religion) and Section 42 (freedom from discrimination): frequently breached by state and non-state actors who prioritize Abrahamic faiths over indigenous traditions. Sections 39, 40, and 41 (expression, assembly, and movement): violated when festivals or *Ìṣẹ̀ṣe* Day processions are forcibly stopped or attacked by opposing religious groups (Abe 2024). When these incidents are viewed collectively, it becomes clear that the prejudice against *Ìṣẹ̀ṣe* is not merely a social friction but a comprehensive human rights crisis. A contextual analysis of these occurrences, ranging from discriminatory employment practices to overt physical aggression underscores the profound legal and ethical deficiencies in safeguarding the religious liberties of *Ìṣẹ̀ṣe* practitioners.

Critically, a broad contextualization of religion and human rights involves three dimensions: the freedom to express one's faith, protection from discrimination, and the state's role in safeguarding religious rights. Furthermore, a rigorous analysis must bridge individual and collective experiences, particularly for minority groups such us *Ìṣẹ̀ṣe* practitioners (Dinstein 1976, 102; Olanrewaju 2020, 186). While religious discrimination is a shared collective burden, it is experienced through diverse individual circumstances. For example, the experience of a job seeker who was refused employment based on his religious identify is different from a practitioner who was prevented from performing rituals by adherents of dominant religious groups. The crux of this paper, however, lies in the government's complicity in these violations. Olanrewaju (2024, 1) notes that policy formulation is heavily

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biased toward Christianity and Islam, thus, leaving *Ìṣẹ̀ṣe* practitioners in a precarious position.

In 2013, the Osun State government, under Governor Rauf Aregbesola, became the first in South-West Nigeria to formally declare 20 August as *Ìṣẹ̀ṣe* Day (Osun State Government 2013). By 2023, this recognition expanded as the governments of Lagos, Ogun, and Oyo also declared the date a public holiday. Currently, four of the six states in the region officially observe the day, marking a significant milestone for the visibility of the *Ìṣẹ̀ṣe* faith in the public sphere (Olufemi 2025). While Ekiti and Ondo states have yet to follow suit, practitioners continue to advocate for a federal public holiday (Abe 2025). The federal government has historically resisted this, citing the fragmentation of traditional religions and the difficulty of satisfying diverse ethnic groups with a single date. Familusi (2010, 160) supports this view, noting that unlike the universally coordinated festivals of Christianity and Islam, traditional celebrations vary widely by tribe and date. However, as a sovereign authority, the government has a duty to shape policies that promote religious inclusion and eliminate bias. Even Familusi admits that the post-independence marginalization of traditional faiths fails to reflect Nigeria's true religious plurality. Thus, the persistent calls for national recognition represent a demand for equitable treatment.

Relatedly, the politics of power rotation in Nigeria is primarily designed to satisfy the dominant Abrahamic faiths (Obadare 2018, 50-55). Elective offices are systematically rotated between Muslim and Christian politicians, resulting in a profound underrepresentation of those who publicly identify with *Ìṣẹ̀ṣe*. As Ojo (2020, 141) notes, political parties consider candidates based on their alignment with Christianity or Islam, creating a significant barrier for *Ìṣẹ̀ṣe* practitioners seeking elective office. This trend was evident during the 2023 presidential election, where religious identity dominated the national discourse. Debates focused exclusively on the Muslim-Muslim ticket of the All Progressives Congress (APC). While Christians opposed the ticket citing marginalization and Muslims defended it as a strategic necessity (Salaudeen and Isah 2024, 111), the concerns of indigenous religionists were entirely excluded from the conversation. This binary rotation of power is discriminatory and casts aspersions on the religious identity of *Ìṣẹ̀ṣe* practitioners.

Educational curricula in Nigeria further institutionalize this marginalization by excluding indigenous religions from primary and secondary schooling. While Islamic Religious Studies and Christian Religious Studies have been core components of the Nigerian

curriculum since the 1950s (Lemu 2002), *Ìṣẹ̀ṣe* is notably absent. This omission forces students who practice *Ìṣẹ̀ṣe* to choose between Islamic Religious Studies or Christian Religious Studies, effectively coercing them into studying doctrines that contradict their own beliefs. Scholars suggest this exclusion is deliberate. Ihedinma (2004, 18) argues that government officials often view indigenous faiths as inferior or refuse to recognize them as religions. Similarly, Akin-Otiko (2019, 40) contends that the Christians and Muslims responsible for drafting the Basic 9-Year Education Curriculum frequently dismiss indigenous religions as paganistic. The government's failure to include *Ìṣẹ̀ṣe* in schools negates its social responsibility to promote religious diversity, equality, and tolerance. In this context, the education system has been weaponized as a tool for the subjugation and silencing of indigenous heritage. Integrating indigenous religions into the curriculum is essential for allowing young Nigerians to understand their trado-religious history alongside foreign faiths (Akin-Otiko 2019, 34). In this regard, studying these religions is vital for Africans to reconstruct their past and assert their relevance within the global religious landscape.

While socio-political inclusion fosters a sense of belonging for all, human rights serve as a framework for upholding individual dignity regardless of social, economic, or religious status (Olanrewaju 2020, 185). However, it is essential to recognize that human rights are not merely individualistic; they also act as a catalyst for promoting the collective rights of groups and associations. The promotion of collective rights ensures that the individual liberties within specific communities are safeguarded against broader systemic pressures (Ilesanmi 1995, 293; Kymlicka 1995, 37-38; Taylor 1994, 59 -61). By protecting the rights of the group, the human rights framework enables minority, cultural, and indigenous populations to express their unique identities and traditions without fear of subjugation. In this sense, protecting the collective identity of a group such as *Ìṣẹ̀ṣe* practitioners is a prerequisite for ensuring the individual religious freedom of its members.

4. From marginalization to epistemicide: deconstructing the erasure of *Ìṣẹ̀ṣe* epistemology

Beyond the immediate violation of religious freedom, the social and political marginalization of *Ìṣẹ̀ṣe* practitioners' triggers epistemicide. This implies the systematic subjugation of *Ìṣẹ̀ṣe* as a legitimate knowledge system. According to Aderibigbe (2022, 32) the antagonism does not merely target a set of beliefs; it silences the

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historical and philosophical foundations of the Yoruba. Therefore, any rigorous analysis of these challenges must be constructed within the framework of epistemic justice (Santos 2014, 42). The transition from social discrimination to epistemicide occurs through a process of systemic delegitimating, where the demeaning status of *Ìṣẹ̀ṣe* serves to invalidate it as a knowledge system. When practitioners face occupational discrimination or social stigma (Hanafi 2021), they are often pressured to adopt the linguistic and conceptual frameworks of dominant Abrahamic religions to achieve social mobility. This creates a knowledge hierarchy where *Ìṣẹ̀ṣe* is rebranded as superstition or evil rather than a sophisticated system of ethics, philosophy, and science (Aderibigbe 2022, 29; Falola 2022, 517). By stripping *Ìṣẹ̀ṣe* of its intellectual status and reducing it to archaic rituals, the state and dominant social actors effectively delegitimize the knowledge by rendering it unthinkable or shameful in modern discourse.

Government in Nigeria and dominant religious groups often dismiss *Ìṣẹ̀ṣe* as a relic of the past rather than a valid way of knowing (Aderibigbe 2022, 29; Akin-Otiko 2019, 40; Olasupo 2013, 20). Marginalization is therefore institutionalized through educational exclusion, which disrupts the intergenerational transmission of Ifa-based epistemology. When public policies provide funding and curriculum space exclusively for Christianity and Islam, they signal that *Ìṣẹ̀ṣe* is not a valid framework for modern citizenship (Akin-Otiko 2019, 34). This structural neglect forces a cognitive displacement; the younger generation is socialized to believe that indigenous ways of knowing are obstacles to progress. As the language, medicinal practices, and philosophical tenets of *Ìṣẹ̀ṣe* are pushed out of the public sphere, the knowledge system undergoes a slow dissolution (Falola 2022, 528). This prejudice creates a knowledge hierarchy that drives epistemicide, making it difficult for policymakers to justify the protection of a system they perceive as obsolete. Public policies formulated solely on religious freedom without acknowledging *Ìṣẹ̀ṣe's* intellectual and cultural significance are bound to fail. By relegating *Ìṣẹ̀ṣe* to a subaltern status within the national religious hierarchy (Olanrewaju 2024, 1), the state and society effectively disenfranchise its practitioners, subjecting them to persistent epistemic injustice. In essence, the human rights violation of the practitioner is merely the surface of the issue. The more profound injustice is the subjugation of a unique way of understanding the world, which is the definitive act of epistemicide.

Now, it is essential to reconcile the right to religious freedom with the status of *Ìṣẹ̀ṣe* as a knowledge system. The primary limitation of

current public policy is a narrow human rights approach that fails to validate *Ìṣẹ̀ṣe* as a relevant and sophisticated knowledge system. When policymakers view *Ìṣẹ̀ṣe* through a lens that dismisses its contemporary relevance in favor of dominant global religions (Akin-Otiko 2019, 40), the motivation to craft protective policies diminishes. This perceived lack of relevance acts as a catalyst for neglect and epistemicide. In effect, the failure to recognize *Ìṣẹ̀ṣe* as a foundational component of Yoruba epistemology creates a knowledge hierarchy that institutionalizes epistemic injustice. While addressing the marginalization of minority religions such as *Ìṣẹ̀ṣe* as a human rights issue is fundamental (Adewale 1993, 22; Atoi et al. 2019, 129; Babatunde et al. 2023, 56; Ilesanmi 2001, 529; Ogbuehi 2017, 162), legal frameworks alone are insufficient if the state fails to recognize *Ìṣẹ̀ṣe* as a valid indigenous knowledge system. To address the root of the crisis, the government must move beyond a narrow human rights lens and adopt a framework that prioritizes epistemic justice. By promoting *Ìṣẹ̀ṣe* as a vital component of Yoruba epistemology, the state can provide a more profound and sustainable basis for protecting the religious rights of its practitioners. Only by acknowledging *Ìṣẹ̀ṣe* as a significant indigenous knowledge system can the government formulate policies that move beyond symbolic gestures toward the genuine preservation of Yoruba intellectual and spiritual heritage. Without this shift, achieving true religious freedom for *Ìṣẹ̀ṣe* practitioners will remain a mirage.

Conclusion

Policy responses to the advocacy for the social and political inclusion of *Ìṣẹ̀ṣe* practitioners remain slow and superficial. While the Nigerian Constitution guarantees the right to freedom of religion, these protections are rarely applied effectively to *Ìṣẹ̀ṣe*, leaving practitioners vulnerable to systemic discrimination and epistemicide. Moving forward, there is an urgent need for federal and state governments in South-West Nigeria to formulate policies that promote *Ìṣẹ̀ṣe* as a legitimate indigenous knowledge system. Such a shift is essential for public re-education as it challenges the archaic or barbaric labels often used to justify marginalization. By achieving epistemic justice, the state can foster a society where diverse ways of knowing are respected, thereby ensuring that the religious rights of *Ìṣẹ̀ṣe* practitioners are upheld as a matter of cultural and intellectual heritage. However, a significant barrier remains: the severe underrepresentation of *Ìṣẹ̀ṣe* practitioners in government. This lack of political presence creates a leadership vacuum in

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policymaking. The onus of transformation devolves upon non-state actors, specifically *Ìṣẹ̀ṣe* practitioners and the traditional rulers who serve as the primary custodians of this heritage. Through strategic advocacy, these leaders can influence the state to adopt a framework of epistemic justice, ensuring that the protection of religious rights is anchored in a deep respect for indigenous knowledge.

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Atheism as a condition of procedural legitimacy in democratic community

El ateísmo como condición de legitimidad procedimental en la comunidad democrática

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Summary: Introduction. 1. Atheism as a structural condition of democratic legitimacy. 2. The uneven landscape of belief and nonbelief. 3. The price of nonbelief. 4. Neutrality is not enough: the procedural turn. 5. Recognizing atheism as a worldview. 6. The political stakes of recognizing atheism. 7. Atheism serves democracy when procedure replaces revelation. 8. The sectarian ceiling and the procedural alternative. Conclusion. References.

Abstract: Nonreligious persons —atheists, agnostics, and the unaffiliated— remain systematically marginalized within liberal democracies that profess commitment to pluralism. I show that such exclusion is not accidental but structurally embedded in pluralisms still defined by theological premises. Through a fact-sensitive, non-ideal methodology integrating political theory with social-scientific research, I document the legal asymmetries, social stigma, and symbolic erasure confronting nonbelievers, and argue that liberal neutrality is insufficient to secure genuine inclusion. In response, I develop a model of procedural pluralism treating atheism as the limiting case for democratic legitimacy. Drawing on the Rawlsian tradition of political liberalism, I show that atheism has functioned historically as a structural condition of modern secular institutions and contrast the community-indexed justificatory logic of revealed religion with the procedurally universal logic of democratic public reason. Only the latter can ground legitimate authority under conditions of deep moral and metaphysical disagreement. Recognizing atheism as a

comprehensive doctrine capable of grounding ethical life and participating in public reason is therefore a requirement of equal civic standing, and democratic authority must be post-metaphysical: legitimacy should arise from procedures of justification accessible to citizens regardless of their theological commitments.

Keywords: protection of religion, marginalization of atheism, procedural pluralism, democratic legitimacy, political liberalism

Resumen: Las personas no religiosas —ateas, agnósticas y no afiliadas— siguen estando sistemáticamente marginadas en democracias liberales que profesan un compromiso con el pluralismo. Sostengo que dicha exclusión no es accidental, sino que está estructuralmente arraigada en formas de pluralismo aún definidas por premisas teológicas. Mediante una metodología no ideal, sensible a los hechos, que integra la teoría política con la investigación en ciencias sociales, documento las asimetrías jurídicas, el estigma social y la invisibilización simbólica que enfrentan los no creyentes, y argumento que la neutralidad liberal es insuficiente para garantizar una inclusión genuina. En respuesta, desarrollo un modelo de pluralismo procedimental que trata el ateísmo como el caso límite de la legitimidad democrática. Apoyándome en la tradición rawlsiana del liberalismo político, muestro que el ateísmo ha funcionado históricamente como una condición estructural de las instituciones seculares modernas y contrapongo la lógica justificatoria, indexada a la comunidad, de la religión revelada con la lógica procedimentalmente universal de la razón pública democrática. Solo esta última puede fundamentar una autoridad legítima en condiciones de profundo desacuerdo moral y metafísico. Reconocer el ateísmo como una doctrina comprehensiva capaz de fundamentar la vida ética y de participar en la razón pública es, por tanto, un requisito de igualdad cívica, y la autoridad democrática debe ser posmetafísica: la legitimidad debe surgir de procedimientos de justificación accesibles a la ciudadanía independientemente de sus compromisos teológicos.

Palabras clave: protección de la religión, marginación del ateísmo, pluralismo procedimental, legitimidad democrática, liberalismo político.

Introduction

Imagine a global minority, numbering in the hundreds of millions, concentrated in the world's most powerful and prosperous nations —and systematically excluded from public dialogue, ranked as the least trustworthy group in society, and often driven to conceal their identity.[1] This is not unfamiliar persecution. It is a reminder that the exclusion of nonbelief belongs not to history's margins but to its recurring center: not incidental but constitutive of a pluralism still ordered by theology[2] —understood as the systematic articulation of divine authority and obligation, from the inner structure of faith to its institutional entanglements with state and law.[3]

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[1] Empirical research across psychology, political science, and sociology documents the depth and pervasiveness of social exclusion faced by nonreligious persons in contemporary societies (Cragun et al. 2012). Anti-atheist prejudice operates as identity signaling: expressing distrust toward atheists affirms one's own religious belonging and moral respectability (Lambert et al. 2025) —one reason such prejudice persists even in ostensibly pluralist societies. The moralization of religiosity generates deconversion guilt that discourages individuals from leaving their religions even as secularization advances (Bounds et al. 2025). The political consequences are substantial: openly nonreligious candidates face significant electoral penalties, particularly among religious and conservative voters (Golebiowska 2024). This stigma also intersects with race: Black atheists are often perceived by coethnics as "less Black" and less trustworthy, revealing how atheism can trigger intragroup identity denial when religious belief is tied to communal belonging (Howard et al. 2023). Together, these findings depict a global minority whose members, even in liberal democracies, face enduring social exclusion, moral suspicion, and political marginalization —even as their numbers grow.

[2] The marginalization of atheists and other nonbelievers is not accidental but structurally embedded in pluralisms shaped by Christian legacies. Asad (1993) argues that the secular emerges not as religion's opposite but as its historical counterpart, molded by Protestant-inflected understandings of belief, conscience, and public life, which explains why secular pluralism excludes nonreligious individuals rather than remaining neutral. Lauwers (2022) provides empirical support, showing that ostensibly secular norms and institutions in Western Europe continue to favor Christians and subtly exclude nonbelievers. Blankholm (2025) similarly finds that atheists occupy a "religion-like" minority status within secular societies, experiencing exclusion precisely because pluralism presumes a theological baseline.

[3] I use "atheism" to designate a spectrum of nonreligious orientations across four domains. The first is "metaphysical": atheism (denial of divine existence), agnosticism (divine existence is unknowable), and antitheism (principled opposition to theism). The second is "epistemic": skepticism (privileging critical inquiry and evidentiary justification) and ignosticism (theological propositions lack coherent meaning). The third is "philosophical": humanism (ethics centered on human flourishing), naturalism (reality consists solely of natural phenomena explicable without recourse to the supernatural), and materialism (explaining phenomena through nature and science). The fourth is "political": secularism, understood as the institutional separation of religious and governmental authority.

Nonreligious persons —atheists, agnostics, and the unaffiliated— confront a structural asymmetry that persists when democratic inclusion remains tethered to belief. Liberal neutrality reaches its limit in societies that mistake faith for a precondition of moral standing. Legitimacy must be grounded not in conviction but in procedures of fairness accessible to all. The unbeliever is democracy's unacknowledged test case.

The rise of the "nones" —those who decline affiliation with any organized religion— signals a profound shift in belief across Western democracies yet has not yielded commensurate political or social inclusion. Secularism admits of multiple meanings: for some, a naturalistic worldview that brackets the supernatural and regards religious ontologies as epistemically unwarranted; for others, the absence of religious identification and a waning sense that sacred forces shape human affairs. The normative question is whether a liberal democratic polity committed to value pluralism can claim genuine inclusivity while withholding equal civic standing from those who reject religious faith.

My approach is fact-sensitive, non-ideal, and critical, drawing on political theory to articulate principles of justice and legitimacy while engaging social-scientific research to substantiate empirical claims about the marginalization of nonreligious persons. The argument proceeds in eight steps: (1) establishing that atheism has been foundational to modern secular institutions; (2) surveying the contemporary global landscape of belief and nonbelief; (3) documenting the persistent marginalization of atheism within liberal democracies; (4) moving beyond state neutrality toward a model of procedural fairness that actively includes nonreligious worldviews; (5) showing that such inclusion enriches political community; (6) drawing out the democratic implications of recognizing nonreligion; (7) arguing that acknowledging atheism is a necessary condition for mature democracy, grounding legitimacy in procedural fairness rather than sectarian revelation; and (8) contrasting the justificatory logic of revealed religion with that of democratic public reason, arguing that only the latter can ground legitimate authority in a pluralistic society.

The argument draws on and extends the Rawlsian tradition of political liberalism (justifying political principles without appeal to comprehensive metaphysical doctrines), maintaining that its inadequate account of nonreligious worldviews makes a more robust procedural pluralism necessary.

My approach foregrounds atheism as normatively decisive, which requires distinguishing it from the broader, internally diverse category of nonreligion. Many who lack formal religious affiliation reject the atheist label, perceiving it as rhetorically combative or socially

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stigmatized, preferring softer or more indeterminate descriptors (Lee 2015; Cotter 2015; Manning 2015). Survey research corroborates this: only a minority of the religiously unaffiliated explicitly identify as atheists, with many describing themselves as agnostic, "nothing in particular," or spiritual but not religious (Pew Research Center 2019). Though nones tend to be younger, they share no unified worldview. What unites them is less a creed than an epistemic disposition privileging personal experience, critical reflection, and moral autonomy over inherited authority or revealed doctrine.

Nonetheless, I place analytic emphasis on atheism for conceptual rather than demographic reasons. Atheism represents the limiting case of nonreligion:[4] it most clearly brackets appeals to transcendent authority and thus most sharply illuminates the normative structure of public justification in pluralistic democracies. If democratic legitimacy requires that coercive laws be defensible in terms accessible to citizens who do not affirm revealed doctrine, the atheist standpoint provides a stringent test of procedural fairness. It clarifies what legitimacy demands under conditions of deep moral and metaphysical disagreement, while remaining attentive to the broader diversity of nonreligious life.

1. **Atheism as a structural condition of democratic legitimacy**

But the historical point is subordinate to the normative one. A political order that cannot justify itself to those who deny theological premises fails its own procedural standard. The question is whether democratic legitimacy remains intelligible in a religiously plural and increasingly nonreligious society.

Atheism is no alien intrusion into pluralism but one of its structural conditions: recognition that coexistence must be negotiated, not decreed. By rejecting claims to necessary or divinely grounded truth, atheism exposes the contingency of all moral authority, clearing the conceptual ground for a procedural politics where legitimacy rests on the fairness of

[4] The "outer boundary" thesis does not privilege secularism as a metaphysical position. It identifies the atheist citizen —one who rejects transcendent warrant while accepting democratic reciprocity— as the limiting case that public justification must survive. This is procedural, not metaphysical: Rawlsian legitimacy requires reasons free and equal citizens may reasonably endorse (Rawls 1993); Habermasian legitimacy requires discursive acceptability across difference (Habermas 1996). A norm that cannot be justified without appeal to revelation fails both tests. Religious contributions to public discourse are not excluded, but their justificatory force must be translatable into generally accessible reasons.

deliberation among irreducibly diverse convictions (Gregg 2002).[5] These developments did not require universal atheism, but they did require that public institutions operate independently of theological necessity.

The decisive historical shift was not from religion to atheism but from revelation to justification. Political authority increasingly required reasons accessible to persons who did not share confessional premises. Once legitimacy was no longer grounded in divine command, it depended instead on consent, reciprocity, and procedural fairness. The architecture of liberal democracy thus assumed —whether explicitly or implicitly— the presence of citizens who would not affirm religious foundations. The claim that atheism is a recent or merely oppositional phenomenon obscures its structural role: as institutions came to rely on public justification, empirical inquiry, and civic equality, nonbelief was not merely tolerated but conceptually presupposed.

Modern science, human rights discourse, constitutionalism, and public education emerged within frameworks that progressively detached legitimacy from theological warrant.[6] The modern language of dignity and liberty rests not on divine conferment but on capacities attributed to persons as such,[7] presupposing applicability across

[5] Proceduralism is of a piece with atheistic and secular-humanist thought that was central to the Enlightenment critique of revealed religion, legitimizing methodological naturalism and the independence of scientific authority. Materialists including Spinoza (1677), Diderot and d'Alembert (1751–1772), and d'Holbach (1770) displaced theological explanation with rational and empirical accounts, laying the groundwork for modern methods that stress verification and falsifiability over doctrinal conformity. Secular academies such as the Royal Society and the Académie des Sciences embodied these commitments and fostered the rise of modern science (Israel 2001; Gaukroger 2006).

[6] Debate persists over whether modern science secularized through gradual transformation of theological categories or decisive rupture with revelation. The continuity thesis emphasizes early modern science's entanglement with religious culture (Shapin 1996; Harrison 2015), arguing that Protestant theology cultivated empirical habits later secularized. Israel (2001) and Gaukroger (2006) counter that scientific autonomy required methodological naturalism —the categorical exclusion of supernatural explanation— and thus the rejection of theological authority as an epistemic veto. The gradualist evidence is real: Boyle understood experimentation as pious devotion, Bacon framed inquiry in the theological language of dominion over creation. But that Protestant thought encouraged empirical habits does not mean it could have authorized the exclusion of supernatural explanation. As the Galileo (1957) affair (1616–1633) illustrates, revelation continued to wield doctrinal veto power. Scientific independence required not accommodation but rejection of that authority.

[7] Atheism has also contributed to the development of human rights by relocating their normative grounding from divine authority to human capacities. Enlightenment thought, most explicitly in Kant (1784), articulates dignity as grounded in rational autonomy rather than theological status, thereby enabling a universalistic framework

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confessions and to those without religious commitment, and rendering nonbelief not an anomaly within democratic modernity but one of its enabling conditions. Secular legal systems and public education similarly reflect the institutionalization of authority grounded in rational deliberation rather than ecclesiastical decree: justice becomes a human achievement sustained through public reasoning; education aims at critical autonomy rather than doctrinal conformity.[8] Early modern political thought detached sovereignty from divine right, grounding authority in consent and public reason.[9] Public education increasingly aimed at cultivating autonomy, civic equality, and scientific literacy rather than doctrinal submission.[10]

The broader cultural consequence was the expansion of permissible dissent. Once clerical authority lost its monopoly over truth claims, discursive space widened to include critique, skepticism, and explicit

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applicable across confessions and to the nonreligious. This shift is institutionally codified in the 1948 Universal Declaration of Human Rights, which treats human dignity as inherent while remaining agnostic about its metaphysical basis. Building on this trajectory, I reconstruct human rights as reflexive, socially generated norms, thereby re-legitimating them under conditions of deep pluralism as self-authored, without recourse to shared metaphysical or theological foundations (Gregg 2016).

[8] By challenging religiously grounded authority and emphasizing reason, consent, and equality, Enlightenment thinkers laid the groundwork for modern legal systems in which justice rests on secular deliberation rather than theological precept. Locke (1690) grounded legitimate power in consent rather than divine sanction; Montesquieu (1748) argued that separation of powers guards against tyranny justified by religion; Voltaire (1763) denounced clerical domination of law and championed freedom of thought and speech; Rousseau (1762a) reconceived legitimacy through the social contract, privileging popular sovereignty over divine-right kingship; Hume (1758) grounded ethical judgment in empirical reasoning and human sentiment rather than theological moralism; Beccaria (1764) called for a secular and humane criminal justice system; Paine (1794) argued for civil liberties founded on reason rather than revelation. Together they redefined justice as a human achievement, anchored in rational deliberation, civic equality, and moral autonomy.

[9] The Enlightenment enduringly reoriented political legitimacy from revelation to reason. Hobbes, Locke, Montesquieu, Voltaire, Rousseau, Diderot, Kant, and Paine each advanced a vision of public authority emancipated from ecclesiastical control, replacing the rule of faith with procedural justification —offering not only a moral alternative to theocracy but a political architecture capable of sustaining pluralism without metaphysical authority.

[10] The modern ideal of secular public education —cultivating civic virtue, critical thinking, and scientific literacy rather than religious indoctrination— draws on Locke (1693), who prioritized rational judgment over doctrinal submission; Rousseau (1762b), who emphasized civic responsibility and moral autonomy over religious obedience; Diderot (1751–1772), who promoted secular knowledge as the foundation of Enlightenment; Voltaire (1763), who denounced clerical control over schooling; and Kant (1803), who advocated education toward autonomous moral reasoning independent of ecclesiastical tutelage.

nonbelief,[11] normalized through secular print culture and public discourse under shared procedural constraints. The task is not to rehearse Enlightenment secularization but to clarify the conditions under which democratic legitimacy remains intelligible within a religiously plural and increasingly nonreligious society.

2. **The uneven landscape of belief and nonbelief**

Secularism denotes both a philosophical orientation and a political commitment to separating church and state, distinct from secularization, the social process through which religion loses public authority. Neither has unfolded uniformly: some societies experience sustained religious decline, others resurgent fundamentalisms. Yet despite the global growth of nonbelief,[12] secularism —and atheism in particular— remains socially and politically marginalized, a pattern historically continuous from antiquity —when Socrates was prosecuted for impiety and Protagoras and Anaxagoras censured for denying traditional gods[13]— through the Medieval and Modern Inquisitions[14] into modern stigma and discrimination.[15]

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[11] From Enlightenment pamphlets to contemporary media, atheist and secular voices have expanded the boundaries of permissible debate. Voltaire (1763), Diderot (1751–1772), d'Holbach (1770), Bayle (1697), and Wollstonecraft (1792) challenged censorship and clerical authority, forging the intellectual preconditions for secular democratic discourse grounded in reasoned dissent.

[12] Close to "a quarter of the US population are atheists" and "roughly 7% of the world self-identifying as atheist and over 16% as nonreligious" (Huft and Fields 2024: 281).

[13] In classical antiquity, disbelief was a civic transgression rather than a private matter of conscience. Religion and polity were mutually constitutive: to question the gods was to threaten the symbolic order sustaining the city's moral and political life. In fifth— and fourth-century BCE Greece, Socrates was condemned for *asebeia* —impiety as subversion of civic piety— because his philosophical inquiry subjected divine authority to rational scrutiny; Protagoras and Anaxagoras faced similar accusations for advancing naturalistic explanations of cosmic order. In Rome, refusal to honor the state pantheon was treated as political sedition, piety functioning as the grammar of civic allegiance. Paradoxically, early Christians were themselves branded "atheists" for rejecting the Roman gods —underscoring that the charge referred not to metaphysical denial but to political deviance. The genealogy running from *asebeia* to heresy tracks the slow emergence of conscience as distinct from civic faith, anticipating the secular principle that epistemic autonomy is integral to political liberty.

[14] Beginning with the Medieval Inquisition (ca. 1184) in France and Italy, the institution evolved through the Spanish Inquisition (1478–1834), which extended ecclesiastical and royal authority across Spain and its American colonies; the Portuguese Inquisition (1536–1821), enforcing orthodoxy in Portugal and its overseas territories; and the Roman Inquisition (from 1542), which institutionalized doctrinal oversight across Catholic Europe.

[15] American and European polling consistently identifies atheists among the least-trusted groups in matters of morality and public leadership. Several U.S. state

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The persistent prejudice equating disbelief with moral deficiency lacks empirical foundation. Secular worldviews sustain robust moral commitments grounded in reason, empathy, and shared civic norms. Zuckerman (2020) shows that highly secular societies such as Denmark and Sweden rank among the world's healthiest, safest, and most equitable.[16] Inglehart (2021, ix) likewise observes that Nordic countries, once shaped by Protestantism, now combine declining religiosity with universal health coverage, generous welfare provision, and an ethos of social solidarity.

At the aggregate level, secularization remains uneven. Data from the European Values Study and World Values Survey (1981–2020) indicate that the proportion of secular-oriented individuals doubled globally to 25.9% and tripled in Europe to 30.2% (Balazka 2020): significant growth, but regionally concentrated.

Structural factors help explain this distribution.

Norris and Inglehart (2011, 108, 147-148) argue that rising education, economic development, and welfare provision generate "existential security", reducing reliance on religion. Insecurity heightens religious salience while secure conditions attenuate it. Lower-income populations in Europe and the United States are almost twice as religious as higher-income groups, while societies marked by persistent poverty or entrenched Islamic traditions exhibit comparatively stable religiosity.

These structural dynamics do not lead to demographic convergence. Wealthier, more secular societies tend toward lower fertility rates while poorer, more religious populations expand more rapidly. Pew Research Center's (2015, 5 y 9) projections suggest that although the religiously unaffiliated are increasing in absolute number, they will constitute a declining global share by 2050. The "unaffiliated" category is also internally heterogeneous, and reliable

constitutions (Arkansas, Mississippi, South Carolina, Texas) still contain unenforceable but symbolically harmful clauses barring nonbelievers from office. From the Bible Belt to South Asia, the Middle East, and Sub-Saharan Africa, identifying as atheist can cost employment, marriage prospects, and social standing. Beyond these social penalties: apostasy and blasphemy laws in Saudi Arabia, Iran, Pakistan, and Afghanistan carry imprisonment, corporal punishment, or death; state constitutions in Malaysia and Indonesia disadvantage atheists in education, marriage, and citizenship; blasphemy statutes in Egypt, Indonesia, and Bangladesh are routinely used to target secular bloggers and humanists; and in Pakistan, India, and parts of Nigeria, accusations of blasphemy have provoked mob violence.

[16] And performing strongly on measures including quality of life, gender equality, low corruption, homicide, and incarceration.

data on atheists and agnostics remain limited (Pew Research Center 2015, 9, 19, 81 and 233). Secularization is not a universal trajectory but a geographically variable and demographically complex one.[17]

The contrast between Europe and the United States illustrates this variability. Europe represents the most sustained experience of religious decline, shaped by prosperity, education, and generational replacement (Brown 2001). Yet secularization theory has evolved from deterministic decline narratives toward context-sensitive accounts emphasizing institutional differentiation and qualitative transformation, complicated by immigration-driven religious diversification (Norris and Inglehart 2011; Davie 2023). Europe is a distinctive trajectory, not a universal template.[18]

The United States long appeared exceptional: a highly religious advanced industrial democracy whose constitutional separation of church and state sustains a competitive religious marketplace.[19] That exceptionalism is diminishing. The share of religiously unaffiliated Americans rose from 16% in 2007 to 29% by 2023–24, driven largely by religious switching (Pew Research Center 2025: 20, 88, 103), and though growth has plateaued since 2019 at roughly 28–29% (Pew Research Center 2025: 379), its diffusion across demographic groups suggests structural change rather than episodic shift. When religiosity is measured by belief rather than affiliation, generational decline renders the United States closer to Europe than once assumed (Voas and Chaves 2016).

Taken together, these patterns resist linear interpretation. Secularization is not an inevitable global endpoint but a contingent reconfiguration of belief, belonging, and institutional trust. Nonbelief strengthens atheist identification and weakens confidence in religious institutions, yet this association attenuates in more secular societies

[17] Inglehart and Welzel (2005, 5 and 22) argue that cultural traditions —whether shaped by Protestantism, Confucianism, or communism— leave lasting imprints on a society's worldview even as direct religious influence wanes, setting trajectories that continue to shape subsequent development.

[18] For one comparative analysis of current regional patterns, see Forster (2025) on relevant differences between Europe and Africa.

[19] In the Norris-Inglehart framework, American religious exceptionalism tracks its welfare exceptionalism: elevated existential insecurity relative to Europe. The U.S. combines high religiosity with high inequality and limited social provision: it ranks near the top of OECD countries on the Gini coefficient and reports the highest levels of prayer, while social spending as a share of GDP ranks near the bottom. In 2022, 37.9 million Americans lived in poverty (Shrider and Creamer 2023); in 2023, 26 million lacked health insurance (Keisler-Starkey and Bunch 2024).

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(Kasselstrand 2019). The relationship among secularization (macro-level change), secularity (cultural condition), and irreligion (individual orientation) is dynamic rather than mechanistic.[20]

3. **The price of nonbelief**

These empirical patterns describe only the external geography of belief. Beneath the demographic asymmetries lies a deeper structural question: how are nonbelievers positioned within the moral and political orders of their societies? The persistence of secular minorities exposes not only variations in faith but enduring inequalities of recognition: hierarchies of moral authority within frameworks that claim to uphold pluralism. Even where secularism thrives, atheism remains socially suspect and politically under-protected. What sustains these inequalities is not only social prejudice but a deeper inheritance: the persistence of theological reasoning within ostensibly secular frameworks of governance. Every faith-tradition, however universal its aspirations, depends on premises of revelation and authority particular to its own community of belief. Translated into law or politics, this produces exclusion not by accident but by design. No faith escapes its own sectarianism. The continued marginalization of atheism reflects a sectarian logic that modern political institutions have inherited, a legacy that still determines who is granted moral standing.[21]

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[20] Warf (2025) documents significant regional variation alongside shared trajectories toward secularization. Europe is the most secularized region, with Sweden, the Czech Republic, and France reporting atheism rates of up to 85%, 55%, and 22% respectively. In the United States, the religiously unaffiliated grew from 16% of adults in 2007 to 29% in 2024, though only 5% identify explicitly as atheist. Australia (20%) and New Zealand (12.9%) show comparable levels. East Asia presents more complex patterns: roughly 19% of Japanese adults identify as atheist despite nearly half being irreligious, while in South Korea atheists constitute a majority (54.9%). Latin America shows a striking shift from 4% irreligious in 1996 to 16% in 2020, with higher concentrations in Uruguay (17.2%) and Chile (≈17%). These contrasts suggest secularization is shaped by both historical legacies —Enlightenment secularism, Confucian rationalism— and contemporary factors including modernization, education, and declining institutional religious authority.

[21] Discrimination likely varies across the nonreligious spectrum, with atheists attracting distinctive moral suspicion. In the United States, atheists rank among the least trusted minorities, frequently excluded from visions of the "ideal citizen" and regarded as deficient in shared moral commitments (Edgell et al. 2006) —perceived as threatening to social trust less through doctrinal disagreement than through their association with the rejection of theistic moral accountability (Edgell et al. 2016). Agnostics and the "spiritual but not religious" tend to encounter less stigma, their

The democratic ideal of pluralism presupposes that diverse worldviews can coexist under conditions of procedural fairness. In practice, however, the boundaries of pluralism are unevenly drawn, and atheism —despite its prevalence and philosophical coherence— is frequently excluded. Exclusion operates through five interrelated mechanisms across legal, institutional, and cultural domains.

a) *Legal asymmetry*. Many jurisdictions provide explicit protection to religious identities under anti-discrimination and hate-speech law while omitting or ambiguously covering atheism and other nonreligious convictions. Even where legal systems expressly include nonreligious belief within protected categories, institutional application treats religion as the paradigmatic case, producing a structural asymmetry in which religion is recognized as a primary bearer of conscience claims while nonbelief is addressed derivatively. This pattern appears across multiple systems (McAdam 2018; Humanists International 2024; Pew Research Center 2024). International instruments — Article 18 of the *International Covenant on Civil and Political Rights* and Article 9 of the *European Convention on Human Rights*— formally protect freedom of thought, conscience, and religion, generally interpreted to encompass nonbelief, yet implementation frequently prioritizes the exercise of religion over freedom from religion. Where these rights conflict, institutional practice tends to favor established theistic norms, with consequences ranging from symbolic marginalization to social sanction or violence against those who openly reject religion.[22]

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positions read as epistemically open or culturally familiar rather than normatively oppositional, retaining symbolic proximity to religious language and notions of transcendence. This gradient suggests that public reactions are shaped not simply by absence of belief but by perceived rejection of religion's moral foundations. Future research disaggregating "the nonreligious" into distinct subgroups —and examining variation across institutional settings, regional cultures, and cohort effects— might determine whether atheists remain more stigmatized than other nonreligious persons.

[22] Comparative reporting and doctrinal analysis document this pattern across multiple legal systems. Humanists International (2024) and Pew Research Center (2024) identify jurisdictions where nonreligious persons face discrimination, blasphemy enforcement, or social hostility. Legal scholarship traces statutory and judicial asymmetries: incitement protections frequently enumerate religious groups while omitting nonreligious convictions (Danchin 2010; Carpenter 2024); state deference to established faiths constrains secular advocacy (Chen 2013; Stahnke 1999); and parental-rights doctrines sometimes permit religious inculcation with limited regard for a child's developing autonomy (Lee 2017). In the United States, recent Supreme Court

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b) *Evidence of Bias.* Bias appears across several domains: established faiths enjoy deference in proselytism policy that secular advocacy does not (McAdam 2018: 2); hate-speech provisions against "religious hatred" protect religious persons but not those targeted by religion; and parental rights to impose religious upbringing frequently override a child's developing autonomy.
c) *Symbolic Erasure.* Atheism is systematically absent from public narratives: interfaith initiatives and civic pluralism programs rarely include atheist voices, while educational curricula and public ceremonies center religious heritage as the cultural norm, casting atheism as deficiency rather than a positive moral or philosophical orientation.
d) *Social stigma and concealment.* Legal and symbolic marginalization reinforce profound social stigma. In the United States, atheists remain the least accepted minority group, ranking below Muslims, LGBTQ+ individuals, and immigrants (Edgell et al. 2006), with cultural linkages between religiosity, trustworthiness, and civic virtue positioning atheists as moral outsiders. Such stigma fosters concealment: while surveys indicate only 3–11% of Americans identify as atheists, indirect methods suggest a true prevalence of roughly 26%, with one-third concealing their disbelief even anonymously (Gervais and Najle 2018).[23]
e) *Policy blind spots.* Pluralism frameworks —multifaith initiatives, diversity programs, workplace accommodation policies— define inclusion narrowly through inter-religious dialogue, systematically omitting secular perspectives. Workplace

decisions expanding public religious expression and funding (Espinoza v. Montana and Kennedy v. Bremerton) illustrate judicial accommodation of religious exercise (US Supreme Court 2020 and 2022). These patterns demonstrate uneven application of conscience protections between religion and non-religion.

[23] Nonbelief in the United States entails continuous identity negotiation within moral hierarchies that equate religiosity with civic virtue. Atheists employ stigma-management strategies similar to those used by other concealable stigmatized groups: concealment and selective disclosure remain common adaptive responses to social identity threat (Mackey et al. 2021), particularly in socially conservative or rural Southern regions (Abbott and Santiago 2023). As with sexual minorities and persons with mental illness, concealment among atheists is associated with diminished psychological well-being, while disclosure correlates with authenticity and self-integration (Yeatts et al. 2022). Survey data reveal patterned variation: women, Republicans, and those raised religious are more likely to conceal their atheism, while participation in affirming atheist communities mitigates stigmatization effects (Frost et al. 2023).

accommodation policies are similarly drafted for explicitly "religious" needs while disregarding equivalent secular ethical commitments.

4. **Neutrality is not enough: the procedural turn**

These legal and social asymmetries point to the need for a procedural conception of pluralism that treats atheism and other nonreligious worldviews as equally legitimate participants in public deliberation. The presumption of secular neutrality does little to correct structural bias, frequently masking implicit Christian norms and rendering atheism invisible and legally precarious. Moving beyond this asymmetry requires reexamining the normative architecture of pluralism itself.

A genuinely procedural account would extend the deliberative commitments of post-Rawlsian political theory. Rawls (1993) inaugurated the project of justifying principles of justice without metaphysical truth claims, but his reliance on "reasonable comprehensive doctrines" has been criticized for reproducing liberal-theistic assumptions about moral reasonableness. Habermas (2008) advances this critique by emphasizing communicative rationality as a shared medium through which both religious and nonreligious worldviews can articulate moral claims. Kymlicka (2000) grounds recognition in equal respect for minority cultures; by parity of reasoning, nonreligious orientations that function as comprehensive moral doctrines merit the same standing.

Yet procedural pluralism cannot rest on formal inclusion alone; it must reflexively examine who counts as a legitimate interlocutor. Benhabib (1996) insists that ideals of reciprocity and justification continually test these boundaries; Mouffe (2000) argues that democratic legitimacy arises not from metaphysical neutrality but from fair, institutionalized contestation among divergent worldviews; Taylor (1992) shows that formal neutrality often conceals cultural hierarchies that marginalize nonreligious moral vocabularies. The positive normative core of procedural pluralism lies not in abstract neutrality but in designing deliberative institutions that ensure equal participation among all comprehensive outlooks capable of moral reasoning, religious or otherwise.

In practice, this requires recognizing atheism as a valid mode of moral and civic agency: including nonreligious representation in intercultural councils, revising anti-discrimination statutes to cover

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nonbelief explicitly, interpreting freedom of conscience to guarantee the right to reject belief without social or legal stigma, and framing atheism in educational and civic institutions not as a deficit but as a legitimate worldview capable of grounding ethical life.

Procedural fairness is achievable only when nonreligious perspectives are fully acknowledged as capable of contributing to public deliberation without translation into theological terms. Until then, pluralism remains structurally tilted toward belief, its promise of democratic inclusion unfulfilled.

5. **Recognizing atheism as a worldview**

Can political communities move beyond mere tolerance toward "deep equality" (Beaman 2017), where secular and religious worldviews enjoy equal legitimacy? Despite its intellectual lineage, atheism remains politically marginalized. Prevailing models of pluralism extend recognition to religious diversity but treat nonbelief as an absence rather than a substantive worldview. This asymmetry reflects deeper cultural norms that equate moral seriousness with theistic belief.

Liberal and post-secular frameworks alike —Rawls's (1993) public reason,[24] Habermas's (2006) postmetaphysical "translation proviso,"[25] Taylor's (2007) politics of recognition[26]— ultimately reaffirm the epistemic primacy of the religious voice. Each assumes that moral depth flows naturally from faith-based sources while nonbelief appears derivative or deficient. The result is a pluralism that accommodates differences "among religions" but struggles to accommodate difference "from religion itself".

Moving beyond this impasse requires recognizing nonbelief as a fully public mode of belonging: a worldview capable of grounding ethical and civic life on its own terms, without translation into theological idioms. Education, law, and public deliberation could then be reimagined to render nonreligious moral vocabularies publicly

[24] A pluralistic democracy requires that political decisions be justified with reasons accessible to all reasonable citizens, permitting religious arguments in private discourse while insisting they be "translated" into secular terms in public deliberation.

[25] Religious citizens may engage in public discourse provided their arguments can be translated into secular, widely accessible terms.

[26] Liberal democracies should acknowledge cultural and religious identities and the epistemic and moral value of diverse perspectives.

intelligible and able to shape norms and policies directly. This post-theological pluralism would institutionalize conditions for civic conversation among interlocutors equally at home in a democratic public sphere.

By "social recognition" in a post-theological pluralism, I mean cultural acceptance —inclusion in public narratives, educational curricula, and civic institutions— as well as legal recognition: explicit protection in anti-discrimination law, inclusion in religious freedom frameworks, and equal standing in conscience decisions. The two are intertwined: legal recognition both reflects and reinforces social recognition.

6. **The political stakes of recognizing atheism**

On the basis of this procedural turn, consider the political stakes of extending social recognition to nonreligion across three dimensions:

a) Recognition would test whether democratic pluralism can sustain disagreement over the very sources of moral obligation. The exclusion of atheism is a structural contradiction: a polity grounded in equal standing cannot coherently withhold recognition from those with nonreligious moral commitments.
b) Recognition would expose the procedural heart of democracy: its commitment not to shared metaphysical truths but to the fairness of deliberation among incommensurable worlviews.
c) Recognition would demonstrate that acknowledging atheism is not a concession to secularism but a realization of pluralism itself, affirming equal standing for all morally engaged worldviews. The state does not arbitrate metaphysical truth; it safeguards conditions for diverse citizens to coexist without domination. Freedom of conscience must protect not only the right to believe but the right not to believe, and to express that stance publicly without exclusion.

7. **Atheism serves democracy when procedure replaces revelation**

The inclusion of atheism compels reconsideration of what grounds legitimacy in a world where no moral authority can claim necessity. If morality does not require theism, its foundations need not be

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transcendental. Evolutionary ethics and primatology suggest that moral sentiments arise from cooperation, reciprocity, and social interdependence rather than divine command (de Waal 2006, 2013). On this view, atheism can draw on naturalistic accounts of morality without appealing to transcendence.[27] The philosophical consequence is not relativism but institutional reorientation: legitimacy must shift from metaphysical foundations to justificatory procedures.

At stake is not the replacement of belief with nonbelief but the transformation of the public sphere from a stage for competing certainties into a forum for disciplined disagreement, free of subordination to any single interpretive authority.

This shift also clarifies why recognition matters. For Honneth (1996), recognition is a precondition of individual self-realization; denial constitutes social injury. Taylor (1992) similarly argues that misrecognition distorts identity and relegates persons to inferior civic status. Treating atheism not as a legitimate worldview but as deviance or moral deficiency symbolically subordinates its adherents. Analytically, atheism is better understood as a family of positions united by the absence of theistic belief than as a single positive doctrine, though for many it functions as a relatively comprehensive orientation toward meaning, ethics, and existence.[28]

Democratic legitimacy requires not merely the absence of persecution but public acknowledgment that nonbelief is a valid participant in collective self-rule —not an endorsement of atheism but a grant of normative standing within shared institutions of justification. Where theological premises are treated as presumptively authoritative, citizens who reject them bear asymmetrical justificatory burdens. Atheism exposes this asymmetry and thereby clarifies a structural truth:

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[27] See de Waal (2006 and 2013) on the evolutionary origins of morality in primates; Kitcher (2014) on ethics as a human achievement emerging from social cooperation; and Tomasello (2018) on shared intentionality and moral normativity as products of our species' natural evolution.

[28] A further distinction: weak (or negative) atheism denotes mere absence of belief in God, while strong (or positive) atheism affirms that no God exists. The former is a minimal epistemic posture; the latter advances a substantive thesis about reality, more clearly approximating a comprehensive worldview. Even so, this characterization remains empirical rather than stipulative. Examining the actual beliefs of nearly 1000 nonreligious participants across 10 countries using open-ended questions, van Mulukom et al. (2023) found that the most commonly expressed beliefs centered on science, humanism, critical skepticism, natural laws, equality, kindness, environmentalism, left-wing politics, and individualism —clustering into three broad worldviews: scientific, humanist, and nature-focused.

democratic legitimacy presupposes that no comprehensive doctrine, religious or secular, may claim priority in advance of public reasoning.

Deliberative democratic theory sharpens this point. Habermas (1996) argues that legitimate norms must be acceptable to all affected under conditions of undistorted communication. Although religious contributions are admissible in informal spheres, their authority in binding decision contexts depends on translation into generally accessible reasons. Atheism functions as a standing reminder of that translational requirement, representing those for whom appeals to revelation cannot serve as justificatory currency. Incorporating atheistic standpoints is thus part of sustaining the reciprocity conditions under which democratic will-formation remains legitimate: procedural democracy acknowledges atheism as a condition of its own possibility.

8. **The sectarian ceiling and the procedural alternative**

To summarize:

a) *Contingency implies plurality.* No moral framework possesses inherent civic authority; incompatible worldviews are a permanent structural feature of moral life.
b) *Plurality requires procedures.* Because no single worldview can claim epistemic privilege and foundational authority, shared norms must be established by *how* we deliberate together, not by *what* we believe to be ultimately true.
c) *Recognition secures equal standing.* Fairness demands that all comprehensive doctrines capable of participating in reason-giving —including atheistic ones— be treated as legitimate contributors to public justification.
d) *Procedural fairness substitutes for necessity.* In the absence of necessary truths or uncontested foundations, legitimacy must rest on inclusive and reciprocal processes that prevent domination by tradition, majoritarian belief, or metaphysical privilege (Gregg 2003).

A procedural conception of legitimacy provides a vantage point for comparing theological and secular forms of universalism. The issue is not whether theology can articulate moral truths or contribute to public discourse. The issue is justificatory structure: under what conditions can claims to universal authority be regarded as binding in a pluralistic democracy (Gregg 1999)?

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Theology in its revealed mode grounds normative authority in sources recognized as divinely disclosed —sacred texts, prophetic revelation, ecclesial tradition— interpretable through reason and subject to internal reform, yet ultimately dependent on prior recognition of revelation as binding. Their justificatory force is conditional on membership in, and assent to, a community of belief that acknowledges those sources as authoritative. Aquinas holds that some truths exceed human reason and are made known by divine revelation;[29] al-Ghazālī treats revelation as the criterion of reason;[30] Śaṅkara (1890) affirms the universality of Brahman only through Vedic authority.[31] In this structural sense, theological universalism is community-indexed: its authority is mediated through faith in particular revelations.

Many theological traditions nonetheless embrace fallibilism, pluralism, or public reason. Natural law traditions argue that certain moral truths are accessible to unaided reason; liberal Protestant, Catholic, Jewish, and Islamic thinkers have defended democratic institutions and overlapping consensus. My point is not to deny these contributions but to note that when theology relies on revelation as the final criterion of truth, its authority remains internal to those who recognize that revelation.[32] Once translated into reasons accessible

[29] "It was necessary for human salvation that there should be a knowledge revealed by God besides the philosophical sciences built up by human reason. For truth about God such as reason could discover would be known only by a few, and that after a long time, and with the admixture of many errors" (Aquinas 1888, I, q. 1, a. 1, ca. 1270).

[30] *Tahāfut al-Falāsifa* ("The Incoherence of the Philosophers"), al-Ghazali (1058–1111) systematically critiques Islamic philosophers —notably Al-Fārābī and Avicenna— targeting doctrines he views as incompatible with Islamic belief, including the pre-eternity of the world and the limitation of God's knowledge of particulars, and affirming the primacy of divine revelation over philosophical reasoning.

[31] Advaita Vedānta, a classical school of Hindu philosophy systematized by Adi Śaṅkara (ca. 8th century CE), teaches that ultimate reality (Brahman) and the innermost self (Ātman) are identical: Brahman alone is real, the world (Māyā) is illusory, and the individual self is inseparable from the absolute.

[32] Whether theological reasoning can transcend its own particularity remains sharply contested. Liberal theorists including Rawls (1997) and Habermas (2006) regard this particularity as disqualifying: because theological claims are grounded in revelation and authority, they lack the universality required by public reason. From within theology, Gustafson (1983) identifies a parallel risk in the "sectarian temptation": retreat from external critique that reduces theology to the self-description of a faith community. Yet defenders of tradition-constituted rationality (MacIntyre 1990; Milbank 1990; Cavanaugh 2009) invert this concern: theology's embeddedness in revelation is not an epistemic defect but the condition of its intelligibility, and translating theological reasoning into secular terms effaces the very sources of meaning theology seeks to

independently of faith, the justificatory force derives not from revelation but from shared rational standards. Theology may contribute to public reason only insofar as it brackets its revelatory grounds.[33]

By contrast, science pursues universal validity through procedures open to any rational agent irrespective of prior metaphysical commitments —intersubjective testability through observation, replication, and revisability. Human rights discourse similarly seeks normative universality through reciprocal justification and contestation across traditions. Both are historically contingent and politically contested, yet their methodological commitments do not presuppose assent to a sacred source: science presupposes that empirical inquiry yields truths accessible to all rational beings; human rights presuppose equal moral standing recognizable through reason rather than revelation (Gregg 2012).

The distinction is not between faith and reason as psychological attitudes, nor between religious and secular persons as moral agents, but between two justificatory logics. In revealed theology, authority descends from a transcendent source recognized within a community of faith as binding; in democratic procedure, authority emerges from reciprocal justification among legally equal citizens. Even the most inclusive theology retains authoritative sources not subject to democratic revision. Democracy, by contrast, treats all claims —including moral and metaphysical ones— as contestable within ongoing deliberation.

This structural difference has political implications. Where public authority is justified by appeal to divine command or sacred text, citizens who do not recognize that source are excluded from full justificatory standing. This exclusion is epistemic because the justificatory currency is unavailable to those outside the interpretive

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preserve. Discussions of religious exclusivism in analytic philosophy (Plantinga 2000; Grube 2024) reinforce this point: any theology arising from a revealed horizon of truth inevitably entails boundaries between believer and unbeliever. Theological discourse remains irreducibly situated, its coherence dependent on the distinctions of inside and outside that liberal political philosophy seeks to transcend.

[33] Revelation is epistemically dependent on faith: claims such as *God intends X* or *Scripture commands Y* are compelling only to those who already accept the revealer as authoritative. It is also non-reproducible: because revelation emerges within specific historical, linguistic, and theological frameworks, those outside these traditions lack the interpretive context to access it as truth. Unlike discourse grounded in logical coherence, empirical support, or mutual intelligibility, revelation validates itself within faith independently of standards any rational agent can recognize. It is thus epistemically asymmetric, binding insiders through shared belief while lacking the discursive force to compel assent from those outside the faith.

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community. The presence of citizens who reject theological premises makes visible the conditions under which authority can be shared: atheism demonstrates that no appeal to revelation can function as a sufficient ground of public legitimacy in a pluralistic order. Democratic authority must be negotiated within human discourse rather than derived from transcendent sanction.

To describe theology as sectarian is not to accuse it of intolerance or moral deficiency but to note that its authoritative sources are community-bound: binding for those who affirm them but not universally accessible as justificatory grounds. Procedural democracy requires that binding norms be justified in terms open to all who are subject to them. While theology may enrich moral reflection, motivate civic virtue, and contribute to public reasoning, insofar as its ultimate authority rests on revelation it cannot serve as a basis of democratic legitimacy. Procedural pluralism —not metaphysical unanimity— is the only framework within which diverse citizens, religious and nonreligious alike, can regard themselves as co-authors of the laws that bind them.

Conclusion

The demand for atheism's recognition in democratic life is well framed within the architecture of political liberalism. On a Rawlsian account, a legitimate constitutional regime rests not on metaphysical truth but on principles justifiable to citizens regarded as free and equal despite their diverse reasonable comprehensive doctrines. Atheism is one such doctrine. It is not identical with political secularism, nor reducible to methodological naturalism, nor exhausted by agnosticism's suspension of judgment, but a substantive comprehensive view affirming the non-existence of God and seeking to ground normativity, meaning, and obligation without appeal to otherworldly transcendence. If liberal neutrality prohibits the state from affirming any comprehensive doctrine as authoritative, then privileging theistic worldviews —symbolically, institutionally, or legally— violates the reciprocity condition embedded in public reason.

Contemporary philosophy of religion reinforces this structural parity. Atheism is not mere negation but typically rests on articulated arguments: evidential critiques of theism, probabilistic reasoning about divine hiddenness, naturalistic accounts of religious belief, and moral arguments concerning gratuitous suffering. Whether these arguments ultimately succeed is not decisive politically. What matters

is that atheism participates in the shared practices of reason-giving and evidential assessment that structure modern epistemic life. To exclude it from public recognition while protecting religious conviction constitutes civic inequality incompatible with liberal fairness.

The deeper point is structural. Coercive laws must be defensible in terms that other reasonable citizens could in principle accept. The presence of citizens who reject theism renders theological premises unavailable as shared civic currency. Atheism does not threaten democratic legitimacy but clarifies its conditions by insisting that moral and political claims be articulated in terms accessible across comprehensive divides.

A parallel insight emerges from Habermasian discourse ethics. Legitimate norms depend on acceptability within processes of undistorted communication among affected participants. Although religious citizens may introduce faith-based reasons in informal public spheres, such reasons must ultimately be rendered into generally accessible language within formal decision-making contexts. Atheism intensifies this justificatory demand. By declining appeals to revelation or divine command, it embodies the standpoint of those who cannot regard theological premises as binding, ensuring that justificatory burdens are not distributed unevenly.

Atheism also contributes substantively to moral reflection. By detaching obligation from divine command, it foregrounds secular accounts of moral objectivity —constructivist, contractualist, consequentialist, and virtue-theoretic— that locate normativity in practical reason, human flourishing, or reciprocal justification. It encourages genealogical scrutiny of inherited moral concepts and situates ethical development within processes of social learning. Many atheistic frameworks defend intersubjective validity or moral realism, and the claim that morality conceptually requires theism is neither necessary nor uncontested.

Its contestability is itself a fact of reasonable pluralism.

Recognition of atheism follows as a requirement of equal civic standing. Freedom of conscience cannot coherently distinguish between protection for belief in God and protection for principled nonbelief. Such recognition entails not merely formal toleration but institutional inclusion: representation of nonreligious citizens within consultative bodies; anti-discrimination protections explicitly covering nonbelief; educational curricula presenting nonreligious doctrines alongside religious traditions; and interpretations of conscience that protect refusal to believe as securely as belief itself. The aim is not to

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establish atheism as civic orthodoxy but to secure parity within the constitutional grammar of conscience.

The broader implication is that democratic authority is necessarily post-metaphysical. The coexistence of theism and atheism within a shared political order renders appeals to ultimate foundations politically incomplete. Legitimacy must instead arise from procedures of justification that neither presuppose nor exclude contested comprehensive doctrines.

A familiar objection holds that such procedural pluralism cannot sustain civic solidarity or reduces moral claims to mere negotiation. But procedural justification need not be normatively empty; it can be structured by substantive commitments to equality and reciprocity while remaining open to revision. The alternative —grounding public authority in disputed metaphysical truths— is unavailable in societies marked by enduring disagreement. The question is not whether democratic procedures embody values but whether those values can be justified without presupposing agreement on ultimate foundations.

The implications extend beyond atheism. Any comprehensive doctrine capable of participating in public reason and reciprocal justification warrants recognition in democratic deliberation —including minority religious traditions marginalized within historically dominant frameworks. The demand is structural: a commitment to procedural pluralism that resists both theological privilege and secular dogmatism.

Atheism's distinctly civic significance lies in contesting theological monopolies on moral justification, compelling democratic institutions to anchor authority in reciprocity and justificatory restraint. It functions not as democracy's adversary but as one of the conditions under which democratic legitimacy remains coherent under pluralism.

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Laicidad como proyecto político de ciudadanía desde el Estado en América Latina: su instrumentalización en tres países (México, El Salvador, Bolivia)

Laicity as a political project of citizenship from the State in Latin America: its instrumentalization in three countries (Mexico, El Salvador, Bolivia)

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Sumario: Introducción. 1. Orientación metodológica. 2. Dos momentos históricos de la laicidad: de la separación iglesia-estado al esquema democrático de ciudadanía. 3. Análisis de las tres experiencias nacionales: legitimidad, derechos humanos y ciudadanía. 3.1 México: la caja de Pandora en la participación pública de grupos religiosos. 3.2. Bolivia: una laicidad ambivalente y una ciudadanía bifurcada entre la conciencia y la religión. 3.3. El Salvador: una ciudadanía tutelada desde el autoritarismo y los valores religiosos. 4. A manera de cierre: un proyecto político de ciudadanía desde el Estado, entre la libertad de conciencia y la libertad religiosa. Referencias.

Resumen: Este artículo analiza la instrumentalización del Estado en relación con los proyectos políticos de ciudadanía en clave de laicidad en América Latina, abordando su evolución en dos etapas principales. La primera etapa se centra en la construcción de la legitimidad del Estado frente a la influencia de la Iglesia

Católica y otras denominaciones, fundamentada en la soberanía estatal y la separación de las esferas política y religiosa. La segunda etapa surge en un contexto de creciente diversidad social, cultural y religiosa, lo que requiere que el Estado reconozca la diferencia y garantice la igualdad en el ejercicio de derechos, transitando hacia una laicidad que promueve los derechos humanos. El análisis se enfoca en las tensiones y desafíos derivados de estos procesos en tres experiencias nacionales: México, Bolivia y El Salvador, seleccionadas por sus enfoques divergentes respecto a los fines políticos y la definición de ciudadanía. El objetivo central es comprender cómo los Estados latinoamericanos han instrumentalizado estos proyectos en torno a la laicidad, mediante una metodología que contempla tres dimensiones: el marco normativo, el protagonismo de grupos religiosos y la instrumentalización política de lo religioso. La pregunta central que guía esta aproximación es: ¿De qué manera han sido utilizados los conceptos de laicidad por los Estados en la configuración de los derechos y la ciudadanía en contextos de diversidad social y religiosa? Este análisis busca aportar una comprensión profunda de las tensiones y transformaciones en las relaciones entre Estado, religión y ciudadanía en la región.

Palabras clave: laicidad, libertad de conciencia, libertad religiosa, ciudadanía, derechos humanos.

Abstract: This article examines the state's instrumentalization concerning the political projects of citizenship within the framework of laicity in Latin America, analyzing its evolution across two main stages. The first stage focuses on establishing the legitimacy of the state in opposition to the influence of the Catholic Church and other denominations, grounded in state sovereignty and the separation of political and religious spheres. The second stage emerges amid increasing social, cultural, and religious diversity, requiring the state to recognize difference and ensure equality in the exercise of rights, transitioning toward a form of laicity that promotes human rights. The analysis emphasizes the tensions and challenges arising from these processes in three national contexts —Mexico, Bolivia, and El Salvador— selected for their divergent approaches to political objectives and citizenship definitions. The central objective is to understand how Latin American states have instrumentalized these projects concerning laicity, employing a methodology that considers three dimensions: the normative framework, the role of religious groups, and the political instrumentalization of religion. The central question guiding this approach is: How have Latin American states utilized the concept of laicity in shaping rights and citizenship within contexts of social and religious diversity? This inquiry aims to provide a comprehensive understanding of the tensions and transformations in the relationships among the state, religion, and citizenship within the region.

Keywords: laicity, freedom of conscience, religious freedom, citizenship, human rights.

Introducción[1]

En América Latina, la laicidad, más que una categoría exclusivamente académica, constituye un concepto histórico-político configurado por disputas en torno a la autonomía del derecho y la política frente a la tutela religiosa (Blancarte 2002; Baubérot 2017). Mediante la laicidad y su expresión institucional —el Estado laico— se han articulado los marcos normativos y las políticas públicas destinadas a gestionar, en primera instancia, la diversidad religiosa, pero también las libertades civiles, fundamentales para el ejercicio de los derechos humanos, con lo cual, a su vez, delinea un proyecto de ciudadanía en el que se inscribe su actuar. Tan solo, en el artículo 18 de la Declaración Universal de los Derechos Humanos de 1948 se establece que:

> Toda persona tiene derecho a la libertad de pensamiento, de conciencia y de religión; este derecho incluye la libertad de cambiar de religión o de creencia, así como la libertad de manifestar su religión o su creencia, individual y colectivamente, tanto en público como en privado, por la enseñanza, la práctica, el culto y la observancia.

De esta manera, el proceso histórico de la laicidad transitó desde el principio de legitimidad del Estado nacional en el siglo XIX hasta la fundamentación de una ciudadanía articulada en torno al reconocimiento y ejercicio de los derechos humanos en el siglo XXI. En países como México, El Salvador y Bolivia, con sus particularidades, la separación entre el Estado y la Iglesia católica avanzó hacia una trayectoria orientada en tres ejes:

1. La garantía de la libertad de conciencia y expresión por encima de cualquier coerción moral, religiosa o política.
2. La igualdad y no discriminación, según la cual la integridad y dignidad de toda persona debe respetarse sin distinción de credo ni privilegios específicos.
3. La autonomía de lo político frente a lo religioso y lo moral, reconociendo la pluralidad de criterios, prácticas sociales y formas de pertenencia desde el concepto de ciudadano que reconoce a otros como pares en la discusión pública (Salazar 2006; Capdevielle 2013b).

[1] Declaración de contribución de autoría: Felipe Gaytán Alcalá y Karina Bárcenas Barajas son personas autoras con los siguientes roles CrediT: conceptualización, metodología, investigación, redacción, revisión y edición.

Ahora bien, esta última forma histórica del proyecto laico parecería resolver la dimensión de la ciudadanía y el marco garantista. Sin embargo, debido a que la discusión ya no se ubica en el exterior —entre lo religioso y lo político—, sino dentro del propio esquema democrático se generan tensiones que surgen de la ponderación del Estado sobre libertades, como la de conciencia y religiosa, en paralelo con su ejercicio estratégico por parte de distintos actores políticos. Esto, es observable en dos sentidos: por una parte, la libertad de conciencia es un derecho humano inalienable que garantiza la autodeterminación de las personas, pero, por otra, desde la libertad religiosa se aboga por la inclusión y participación de las comunidades confesionales y los grupos morales en la definición de leyes y políticas públicas, tutelando el bien común.

Quienes estratégicamente se posicionan desde la defensa de la libertad de conciencia, asumen que los individuos, en su capacidad reflexiva, definen sus propios sistemas de moralidad (en relación con sus convicciones religiosas, filosóficas o políticas) y su aplicación frente a casos concretos (Capdevielle 2013a) por lo que, dicha libertad es la antesala de derechos como el aborto, la eutanasia, o la identidad de género, pero también de la politización de grupos neoconservadores antigénero, que enarbolan la libertad de conciencia para objetar la educación sexual en las escuelas de educación básica, a partir de derechos como el de los padres a educar a sus hijos y a una educación sin ideología (Bárcenas 2026).

Por su parte, la libertad religiosa puede ser entendida en dos sentidos: como libertad de los individuos de profesar, practicar y creer sin ninguna restricción más que cuidar la dimensión de la dignidad y respeto de los derechos humanos, pero también, en un sentido restringido, como la libertad de participación de las comunidades y grupos religiosos como organizaciones en la esfera pública, influyendo en la elección de los ciudadanos así como en las decisiones que el Estado instrumente (Gaytán 2018).

Esta segunda definición ha sido la hoja de ruta de un movimiento amplio de iglesias y comunidades que exigen participar en la esfera política para la toma de decisiones en materia legislativa y de políticas públicas. Reivindican un pleno derecho a intervenir en la construcción del bien común, argumentando que contribuyen sustancialmente a él.

En consecuencia, tanto actores neoconservadores como iglesias progresistas ven en este reconocimiento de libertades una validación de su labor pastoral y moral, contribuyendo al principio pro-persona, según el cual toda norma debe aplicarse de la manera más favorable a los ciudadanos (Vaggione y Serna de la Garza 2013).

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De esta forma, el objetivo de este artículo consiste en analizar de qué manera en tres países de América Latina (México, Bolivia y El Salvador) el Estado ha instrumentalizado la laicidad para configurar un proyecto político de ciudadanía garante de libertades civiles, fundamentales para el ejercicio de los derechos humanos, como lo son la libertad de conciencia y la libertad religiosa.

Para ello, en primera instancia, se reconstruye la historicidad del concepto desde la legitimación del Estado nacional decimonónico hasta su reorientación hacia una ciudadanía de derechos humanos. Posteriormente, se compara su instrumentalización en las tres experiencias nacionales —México, Bolivia y El Salvador— para identificar sus alcances y límites como marco garantista.

Por consiguiente, el análisis se estructura en cuatro apartados, además de esta introducción. El primero expone la orientación metodológica. El segundo reconstruye los dos momentos históricos de la laicidad. El tercero analiza comparativamente tres experiencias nacionales —México, Bolivia y El Salvador— a partir de sus marcos legales, el protagonismo de los actores religiosos y la instrumentalización política de lo religioso. El cuarto, a manera de cierre, examina la tensión entre libertad de conciencia y libertad religiosa como eje articulador de los proyectos contemporáneos de ciudadanía desde el Estado.

Este artículo deriva de dos proyectos de investigación que, si bien avanzaron en paralelo, convergieron en la problemática de la laicidad como proyecto de ciudadanía y la garantía de los derechos humanos. El primero, desarrollado desde la Universidad La Salle en colaboración con organizaciones civiles de México, El Salvador y Bolivia, definió una tipología de los regímenes de laicidad en América Latina y analizó sus tensiones con los derechos sexuales y reproductivos. El segundo, realizado desde el Instituto de Investigaciones Sociales de la UNAM, abordó los movimientos antigénero en la región.

1. **Orientación metodológica**

El presente artículo se inscribe en una orientación metodológica cualitativa-comparativa que deriva de dos investigaciones que se desarrollaron de manera paralela, por medio de análisis situados en distintas coordenadas latinoamericanas. El análisis se enfoca en la instrumentalización de la laicidad como proyecto político de ciudadanía desde el Estado en tres países latinoamericanos: México, Bolivia y El Salvador. La selección de los casos no obedeció a su escala o tamaño, sino a la singularidad de su impronta laica: México como parámetro

histórico de la laicidad regional junto con Uruguay (Da Costa 2018; Mainwaring y Pérez- Liñán 2013; Vega 2005), Bolivia como ejemplo de una perspectiva ambivalente en torno a la laicidad en un Estado plurinacional, y El Salvador como laboratorio de una ciudadanía tutelada por el autoritarismo y permeada por el discurso religioso.

La problematización en torno a los casos se orientó a partir de las siguientes interrogantes:

1. ¿Contribuyó la laicidad, en su devenir histórico, a la construcción de una ciudadanía sustentada en los derechos humanos en América Latina?
2. ¿Cómo transitó la laicidad de un concepto estrictamente político de legitimidad estatal a uno articulado en torno a los derechos y las libertades civiles?
3. ¿Garantiza la laicidad el ejercicio equilibrado de libertades, o pondera, según el contexto y la etapa política, la libertad de conciencia sobre la libertad religiosa —o viceversa—?
4. ¿Cuáles son las disputas entre la perspectiva de la libertad de conciencia y la de la libertad religiosa en el terreno de las decisiones ciudadanas y las demandas de los grupos confesionales?

El periodo de análisis se inscribe en una temporalidad de larga duración, dadas las particularidades del proyecto político de ciudadanía en cada país, pero con coordenadas de trazabilidad que remiten a los últimos lustros del presente siglo.

El proceso de recolección de información se integró por medio de:

1. La revisión documental de marcos constitucionales, legislación secundaria y documentos de política pública.
2. La metaetnografía (como se declaró en Bárcenas 2026).
3. Descripciones en diarios analíticos derivadas de la participación directa en foros y seminarios con actores políticos, activistas y religiosos en cada país[2], pero también de diálogos sistemáticos con académicos especializados en las experiencias nacionales seleccionadas.

Los datos se analizaron en relación con tres dimensiones derivadas del marco de construcción social de políticas públicas (Manosalvas y Rave 2022):

[2] Las referencias a eventos específicos observados directamente se consignan como fuentes primarias de campo a lo largo del texto.

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1. Marcos legales que definen el proyecto político del Estado en torno a la laicidad.
2. Grado de protagonismo de los grupos religiosos en las negociaciones sobre leyes y programas que garanticen o restrinjan libertades y derechos ciudadanos.
3. Instrumentalización de lo religioso por parte de actores políticos —cuando partidos, funcionarios y gobernantes utilizan el discurso religioso para validar sus estrategias políticas—.

2. Dos momentos históricos de la laicidad: de la separación Iglesia-Estado al esquema democrático de ciudadanía

El concepto laicidad no surgió como elaboración filosófica durante la Revolución Francesa del siglo XVIII, ni deriva exclusivamente de la teología luterana y la Reforma protestante (Di Stefano 2011). Constituye primordialmente un concepto político institucionalizado como marco de disputa del Estado nacional emergente frente al poder eclesiástico, que administraba el espacio político, la trayectoria vital de los ciudadanos —registro de nacimientos, defunciones, uniones familiares, herencias— y la orientación axiológica de la cultura política (Poulat 1987; Bohoslavsky 2009).

Este concepto se trasladó hacia la América Latina decimonónica durante los procesos independentistas respecto a la Corona española. En ese contexto, la Iglesia católica operaba como gestora hegemónica de la vida social, política y cultural en cada país (Zanatta 2007). A diferencia del mundo protestante, donde los Estados nacionales emergentes debieron gestionar la diversidad religiosa para garantizar la convivencia entre católicos, diversas expresiones protestantes e incluso confesiones no cristianas como el islam, en Latinoamérica no existía pluralidad religiosa que administrar. La disputa se centraba en el poder político frente a una Iglesia católica que detentaba la legitimidad en la esfera pública.

En la experiencia protestante estadounidense, la ciudadanía incorporaba el reconocimiento de la diversidad de creencias, prácticas y pertenencias, gestión que derivó en lo que Bellah (1967) denominó religión civil. En contraste, en América Latina la laicidad no se enmarcó en una ciudadanía desde la perspectiva de la diversidad: el proyecto ciudadano se construyó políticamente en función de la lealtad al Estado, confinando lo religioso al ámbito privado o a expresiones culturales sin incidencia en las decisiones políticas (Blancarte 2002).

El objetivo central consistía en descatolizar el espacio público: desarticular el control social y político de la Iglesia católica para transferirlo al Estado y construir una cultura política desprovista del sello católico hegemónico. La educación pública emergió como campo central de disputa por los contenidos destinados a formar ciudadanos en valores cívicos antes que en valores religiosos. Prevaleció la rectoría estatal sobre la educación, limitando la participación de grupos religiosos a la gestión escolar sin injerencia en contenidos curriculares obligatorios. Uruguay y México radicalizaron este modelo, mientras Perú y Paraguay mantuvieron un régimen formal donde la Iglesia conservó influencia educativa (Cunha 2018).

A lo largo de los siglos XIX, XX y XXI, la laicidad experimentó dos momentos diferenciados en la gestión de la diversidad. El primero, extendido durante los siglos XIX y XX, se fijó como separación institucional Estado-Iglesia, privilegiando la legitimidad del poder político estatal y la construcción de una identidad nacional que diluyera la influencia católica en la esfera pública. El segundo, desarrollado desde el siglo XXI, desplazó el énfasis hacia la construcción de una ciudadanía que ejerce libertades y derechos sin distinción de creencias, con el Estado como garante de ese marco (Esquivel y Burity 2019). En ambos casos, lo religioso permaneció excluido de lo público; sin embargo, la transición implicó pasar del Estado como dispositivo de homogeneidad política a la garantía estatal de la diversidad ciudadana.

El modelo laico decimonónico que operó hasta el siglo XX se concentró en el diseño institucional del Estado, no en la ciudadanía contemporánea. La laicidad se entendió durante décadas como separación institucional, ya fuera formal —Paraguay, Perú— o radical —Uruguay, México—. Su realización quedó contenida en marcos jurídicos que definieron el carácter laico del Estado. Costa Rica constituye la única excepción que jurídicamente no separó Iglesia y Estado; el resto instituyeron en diverso grado la legitimidad estatal (Caetano 2013).

Fue hasta el segundo momento cuando el debate transitó de la centralidad del Estado hacia la ciudadanía, debido a la centralidad de libertades y derechos —como los Derechos Humanos— para la configuración de sociedades plurales y diversas. Este giro no fue fortuito: resultó de la extensión de la democracia en la primera década del siglo XXI y de la creciente necesidad de gestionar y construir marcos de gobernanza para la diversidad en sentido amplio, incluida la diversidad religiosa. En ese contexto se debatía el pluralismo democrático y la inclusión de las minorías, lo subalterno y lo marginal a la representación política. De ahí que haya iluminado la dimensión

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democrática desde la no discriminación, la igualdad y la garantía de las libertades y derechos ciudadanos, más allá de la simple exclusión de lo religioso del espectro político. La pregunta ya no era la separación, sino el acomodo entre estos ámbitos en la esfera pública. De ahí la insistencia en la neutralidad e imparcialidad del Estado, pero, sobre todo, en el ejercicio de libertades y derechos dentro de un marco de derechos humanos (Beller 2015).

Fue en este contexto donde los temas de libertades y derechos sexuales y reproductivos hallaron un marco político y legal para exigir al Estado la garantía de su ejercicio, tal como desde la segunda década del siglo XXI lo harían los actores de los movimientos antigénero o contra la ideología de género para visibilizar los derechos que construyeron para enarbolar sus demandas.

En síntesis, la historicidad del concepto revela una trayectoria que surgió para dar sentido y cohesión al Estado-nación y transitó por distintos derroteros hasta situar la discusión en los derechos y libertades ciudadanas. No obstante, es preciso reconocer que la laicidad, como dimensión política, ha habilitado distintos proyectos de ciudadanía: unos orientados al reconocimiento de los derechos humanos, otros instrumentalizados en beneficio de un régimen político determinado, y otros convertidos en mecanismos de control y tutela de las libertades y derechos bajo la premisa de la seguridad y el bien común.

En esta perspectiva, el proyecto político no se concibe como la ruta estratégica de un actor que detenta el poder o domina el gobierno. Se trata, más bien, de una construcción política, social y cultural que incorpora la perspectiva de los diversos grupos, colectivos y actores políticos en una visión compartida de valores, ejercicio del poder y solución de conflictos. Dicho proyecto reside en la constitución misma del Estado, el cual, mediante marcos legales e instrumentos políticos —persuasivos y coactivos—, gestiona la pluralidad en la arena pública y fija los horizontes políticos en términos de continuidad, cambio o reestructuración de los acuerdos.

Quien nos lee encontrará una discusión más amplia sobre las múltiples definiciones de la laicidad en relación con los derechos humanos —tanto en el ámbito de la acción política como en la discusión académica y el activismo político— a partir de diversos estados del arte producidos en la última década. En ellos, se destaca la importancia de comprender la distinción entre laicidad y secularización en los contextos latinoamericano y anglosajón, una discusión que no solo es semántica, sino histórica, ya que involucra al Estado y la gestión de la diversidad religiosa en relación con el ejercicio de las libertades civiles (Gaytán 2018; Panotto 2023 y Zavala 2016).

Otros enfoques buscan comprender el papel de la religión en el espacio público, considerando las expresiones sociales y políticas que articulan la pluralidad religiosa en un campo de relaciones y disputas. Estas no solo se dirigen hacia el Estado, sino también hacia la visibilidad y protagonismo de las organizaciones religiosas en dicho espacio, en tanto reconocen y hacen referencia a sus símbolos, ocupan lugares públicos y expanden su presencia en calles y plazas. Asimismo, inciden en problemáticas sociales como la violencia, la pobreza y las adicciones, buscando influir en la cultura cívica bajo un marco de valores que consideran auténticos (Frigerio 2018 y García Bossio 2024).

Un giro más en el debate sobre la laicidad se centra en la libertad religiosa, entendida como un derecho humano con múltiples acepciones. Estas van desde la discusión sobre si dicho derecho es exclusivo de los individuos, en su ejercicio pleno de creencia, práctica y pertenencia, hasta su extensión a las organizaciones religiosas, que serían responsables de tutelar a su comunidad en temas morales y en la relación con la sociedad civil (Sánchez Sandoval 2024 y Mainwaring y Cavalcanti 2018).

A partir de estas discusiones generales, presentamos un estudio centrado en tres experiencias nacionales que permiten comprender el proceso histórico de la laicidad en relación con la agenda de los derechos humanos y la ciudadanía.

3. **Análisis de las tres experiencias nacionales: legitimidad, derechos humanos y ciudadanía**

La caracterización general de los tres casos analizados: México, El Salvador y Bolivia, puede articularse como un proyecto de ciudadanía que parte de su fundamento legal —el cual define su visión y su experiencia histórica—, el papel de los liderazgos en la escena política, su participación o demanda de intervención y la instrumentalización política de lo religioso.

En México se configura una laicidad ampliada que reconoce a los grupos religiosos como parte de la garantía de derechos, lo que ha generado tensiones y demandas de estos grupos sobre la progresividad de derechos alcanzados en torno al cuerpo, la vida y la familia. Bolivia, en cambio, presenta un proyecto bifurcado y ambivalente que aboga por una ciudadanía multicultural pero fija su hoja de ruta en los marcos históricos religiosos que se sitúan entre lo étnico y lo católico en la educación, la salud y los programas de reconocimiento social. El Salvador, aunque es un país pequeño, resultó un laboratorio sobre una

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nueva ciudadanía tutelada y silenciada por el poder, que instrumentaliza lo religioso para un esquema autoritario que antepone la seguridad y el bienestar a las libertades y los derechos humanos, presentados como justificación de la relatividad moral y la permisividad.

3.1. *México: la caja de Pandora en la participación pública de grupos religiosos*

El caso mexicano es paradigmático en América Latina. Su historia como nación se vincula a sucesivos momentos en los que el Estado disputó su legitimidad con la Iglesia católica en la gestión de lo público y la definición de ciudadanía. Ser mexicano pleno equivalió durante siglos a ser católico: toda la trayectoria vital de una persona transitaba por los rituales y registros católicos —nacimiento, matrimonio, muerte—. Frente a ello, el Estado asumió esos procesos y recursos administrados por la Iglesia, lo que derivó en dos guerras civiles: la Guerra de Reforma en el siglo XIX y la Guerra Cristera en el XX. De ambas, ninguna fue una disputa por la creencia, sino por el dominio político sobre la sociedad (Bohoslavsky 2009).

La Constitución Política de los Estados Unidos Mexicanos[3] (1917) definió un marco que separaba lo político de lo religioso, desde la participación política de los ministros de culto hasta la educación pública y los programas de salud. A lo largo del siglo XX los marcos legales mantuvieron esta separación, aunque de facto se dieron colaboraciones y vasos comunicantes no solo con la Iglesia católica, sino con la creciente diversidad religiosa cristiana, así como de otras denominaciones. El reconocimiento legal de las asociaciones religiosas en 1992 constituyó un primer paso para responder a una demanda largamente sostenida: los ministros de culto habían exigido su reconocimiento como tales en el marco de los derechos humanos, dejando de ser lo que ellos mismos calificaron como ciudadanos de segunda (Salazar 2006).

Este reconocimiento legal y la formalización de mecanismos de gestión pública, sumados a la creciente diversidad religiosa, abrieron espacios a la participación social y cultural en la esfera pública. En ese contexto, la expansión de derechos y libertades en torno al aborto, la eutanasia, la diversidad sexogenérica y los derechos culturales, años más tarde (en 2016), dio paso, en el país, a la cristalización de un

[3] Disponible en: https://www.diputados.gob.mx/LeyesBiblio/pdf/CPEUM.pdf

proyecto neoconservador por medio del cual sus actores exigieron ser escuchados y tomados en cuenta. Argumentaron ser una mayoría social con trato de minorías en la expansión de derechos que para ellos constituían temas centrales de la moral pública (Bárcenas 2022 y 2026). Surgieron entonces grupos de la sociedad civil, de inspiración religiosa, como el Frente Nacional por la Familia.

Además, una grave crisis de seguridad se desencadenó en 2006, derivada de la declaración de guerra que realizó el presidente Felipe Calderón al crimen organizado, la cual disparó los índices de homicidios, desapariciones, robos y trata de personas migrantes hacia Estados Unidos. Grupos religiosos —católicos, anglicanos, mormones, entre otros— se convirtieron en piezas clave en la contención del dolor de las víctimas y el acompañamiento de migrantes. Su incidencia pública escaló rápidamente de lo social a lo político: el Estado abrió espacios de diálogo por la paz y la reconciliación, aceptando el acompañamiento de estos colectivos en labores de contención moral.

A partir de 2023, los foros y jornadas por la paz[4] convocados desde la Secretaría de Gobernación se ampliaron a todas las denominaciones religiosas y cultos, bajo el principio de resarcir el tejido social. Estos espacios sirvieron como punta de lanza para reformular el principio en el marco de la libertad religiosa: el derecho de los grupos religiosos a participar en la gestión de la paz, pero también a ampliar la agenda hacia otros temas como la educación en valores religiosos, la salud y la intervención en los dilemas éticos relativos al cuerpo y la vida.

Este panorama lleva a plantear la confluencia de dos procesos en la gestión pública de la diversidad religiosa y la exigencia de un nuevo proyecto de ciudadanía. Por un lado, la libertad de conciencia reivindicada por los colectivos de la sociedad civil —feministas, organizaciones de salud reproductiva, educación— para exigir que el Estado garantice su elección sin que grupo religioso o moral alguno la impida, de la misma manera como los grupos de la sociedad civil de inspiración religiosa exigieron participar en las disputas legislativas en torno a las agendas feministas así como sobre derechos sexuales y reproductivos enarbolando la libertad de conciencia de todo ciudadano para elegir lo que considera éticamente aceptable.

Por otro lado, la apertura de espacios políticos para resolver la crisis de seguridad y construir la paz puso sobre la mesa la pregunta de si la laicidad histórica de separación entre lo religioso y lo político se había agotado y era necesario reformular el proyecto de ciudadanía bajo el

[4] Organizadas por la Secretaría de Gobernación en el mes de septiembre.

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principio de libertad religiosa: abrir la participación institucional bajo la demanda de sumar a la identidad nacional.

En ambos casos, los actores políticos han instrumentalizado estos debates, en parte, para obtener respaldos electorales, de actores legislativos y de la opinión pública. Tras una pandemia que enfatizó la amenaza de no contar con un principio de autoridad que fijara límites a los derechos, el discurso de la inclusión y la igualdad fue remarcado como relativización moral. De igual forma, en el caso de la libertad religiosa se enfatizó la importancia de la solidaridad social y los recursos que aportan las comunidades religiosas, reivindicando no solo el derecho a ser escuchadas, sino a tomar decisiones conjuntas con el Estado.

De esta manera, el proyecto mexicano experimentó una expansión significativa en el reconocimiento de los derechos humanos, asumiendo estrictamente en lo legal y político la dimensión de ciudadanía sobre cualquier creencia religiosa o moral. No obstante, esta finalidad se ha visto cuestionada por los grupos religiosos que exigen ser tomados en cuenta no como individuos-ciudadanos, sino como colectivos con posiciones morales claras que orienten las decisiones públicas (Bárcenas 2022 y 2026). El régimen de la denominada Cuarta Transformación alentó este posicionamiento al admitir, como partido político, la participación de grupos evangélicos, con participación en el congreso nacional e incluso posiciones en gobiernos estatales y municipales (Bárcenas 2018; Delgado-Molina 2019). Paradójicamente, el proyecto de ciudadanía que impulsó el Estado, por medio de la instrumentalización de la laicidad, fue extendido en el reconocimiento de los derechos humanos, pero ahora enfrenta el dilema de incluir los derechos de los grupos religiosos desde la libertad religiosa, en tensión con la defensa de la libertad de conciencia de dos sectores de la sociedad civil con agendas opuestas.

3.2. *Bolivia: una laicidad ambivalente y una ciudadanía bifurcada entre la conciencia y la religión*

La historia de Bolivia estuvo marcada por un predominio católico en los asuntos públicos a lo largo del siglo XX. Incluso durante la dictadura del general Banzer la cual duró de 1971 a 1978, la Iglesia católica mantuvo un papel preponderante en la agenda moral, marcada por los valores cristianos, situación que perduró con el retorno a la democracia (Quiroga 2001). No fue hasta la llegada del presidente Evo Morales y el Movimiento al Socialismo (MAS), junto con una pléyade de organizaciones civiles, indígenas y movimientos sociales

reivindicativos de una ciudadanía anclada en los derechos humanos, que se convocó a una Asamblea Constituyente. La Constitución[5], aprobada en 2009, denominaba a Bolivia como Estado Plurinacional, donde la idea de representación ciudadana no respondía a un modelo liberal sino a un pluralismo que diera cuenta de los múltiples actores sociales, sus demandas y necesidades (Gaytán 2022).

La Constitución reconoce la laicidad como principio de identidad del país, definiéndola como la independencia del Estado de cualquier religión, al tiempo que garantiza la libertad de culto y de creencia. Tres ejes legales constituyeron el fundamento del plan político de ciudadanía: la independencia del Estado (ninguna religión es asumida como oficial); la igualdad de cultos (todas las organizaciones religiosas o espirituales poseen igual personalidad jurídica y derechos); y la garantía de la libertad de creencia.

Bolivia, como nación plurinacional, reconoce la diversidad religiosa y cultural, pero políticamente articula un proyecto de ciudadanía bifurcado, debido a que reconoce la laicidad como ámbito de ciudadanía igualitaria e inclusiva; pero de manera simultánea incorpora la perspectiva religiosa en la educación y la salud en dos vertientes: por una parte, desde las diversas tradiciones étnicas y afrodescendientes, por otra desde la óptica católico-cristiana que domina la cultura política. Se construye así una ciudadanía enmarcada en valores religiosos que influyen en la manera de entender y ejercer tanto los derechos como las libertades, más aún en la forma en que desde la política se garantizan los derechos humanos (Camisón 2012).

La ambivalencia se manifiesta en la propia Constitución, al indicar en su preámbulo que la identidad nacional procede tanto de Dios como de la Pachamama (Madre Tierra). Según figuras constituyentes de aquel entonces, se trataba de un enfoque intercultural y sincrético de una nación que se define como plurinacional (Gaytán 2022). Sin embargo, este principio fundacional no es meramente declarativo: repercute directamente en los contenidos de la educación pública, donde se incluyen materias y recursos públicos para la enseñanza de valores religiosos católico-cristianos o de creencias espirituales de acuerdo con cosmovisiones indígenas y afrodescendientes (Ministerio de Educación 2012). Según las discusiones sostenidas en espacios como el Foro por un Estado Laico (2024)[6], más que generar un proceso

[5] Véase *Constitución Política del Estado* Plurinacional de Bolivia. 2009. Disponible en: https://www.oas.org/juridico/spanish/mesicic3bolconst.pdf

[6] Organizado por Diakonia Bolivia, Libertades Laicas Bolivia y Católicas por el Derecho a Decidir Bolivia, el 25 de septiembre.

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de inclusión universal, esta configuración fragmenta el sentido ciudadano —no en la lógica liberal, sino en la del reconocimiento mutuo y sincrético—. De esta manera, la tensión entre libertad de conciencia y libertad religiosa se prefiguró desde el propio texto constitucional: por un lado, se reconoció la libertad religiosa, pero, por otro, se fundamentó el Estado en la Pachamama y Dios.

La crisis política de 2019, que culminó con la salida del presidente Evo Morales y el arribo de la senadora Jeanine Áñez como titular provisional del Ejecutivo, mostró también la disputa de los grupos políticos por el poder y el uso estratégico de lo religioso para legitimar su causa. Los movimientos sociales enarbolaron la bandera de la *wiphala* (símbolo aymara referente a la Pachamama), mientras las élites tradicionales invocaron la Biblia como ley suprema (Gaytán 2022; Claros y Díaz Cuéllar 2022). En este conflicto, la Iglesia católica buscó modificar la Constitución para obtener un reconocimiento especial y tutelar la moral pública, intentando frenar los derechos y libertades obtenidos por colectivos civiles en torno al cuerpo, la familia y la vida.

Para 2023, tras la pandemia y en medio de una crisis política al interior del MAS y una crisis económica derivada de la caída de precios del grano y del mercado de litio (Quiroga y Pagliarone 2023), los grupos religiosos —sobre todo de signo evangélico— incrementaron su influencia en la esfera pública con un discurso moral neoconservador, invocando el ejercicio de la autoridad para frenar lo que denominan el relativismo ético promovido por las organizaciones sociales (Mayorga 2022). Los derechos, según su percepción, deben regresar a un fundamento religioso y evitar la progresividad que conduce al caos.

En esa misma línea, la Iglesia católica mantuvo su protagonismo como mediadora en el conflicto político: tanto en 2019 como en 2024 y 2025 —este último al interior del MAS, entre el presidente Arce y el expresidente Morales— (Ceppi 2024). Esta mediación contribuyó a salidas políticas, pero también fue aprovechada por un sector eclesiástico para sumarse a la ofensiva contra los derechos y libertades adquiridos.

La crisis social y la polarización política repercutieron directamente en la cultura política. Los bolivianos manifestaron actitudes a favor de un gobierno fuerte que brinde seguridad antes que libertades y derechos (Ichuta 2025). Los discursos religiosos sobre la crisis de valores reforzaron la persistencia de actitudes de rechazo (45%) a los programas que reconocen derechos amplios, impulsados por organizaciones de la sociedad civil (UNFPA 2025).

3.3. *El Salvador: una ciudadanía tutelada desde el autoritarismo y los valores religiosos*

El Salvador constituye una experiencia singular: un laboratorio de ciudadanía silenciosa, plegada a un Estado autoritario donde el discurso religioso permea lo político y viceversa. Este laboratorio no se originó en el periodo del presidente Bukele, sino en el siglo XIX, cuando la principal actividad agrícola identificó al país como una república cafetalera (1871-1931), con esquemas de producción extractivista manejados por una oligarquía nacional y grandes compañías extranjeras (López Bernal 2017). En ese contexto surgió Farabundo Martí, fundador del Partido Comunista, quien tuvo vínculos con el líder revolucionario César Augusto Sandino en Nicaragua. Tras su experiencia en la lucha nicaragüense, Martí retornó a El Salvador y en 1932 promovió el levantamiento campesino contra la explotación (Arias 2012). Fue fusilado, pero su lucha perduró por medio del Frente que lleva su nombra.

Tras la sublevación de 1932, El Salvador atravesó un largo periodo de dictaduras militares (1932-1972) bajo el pretexto de garantizar el orden. En 1980 surgió el Frente Farabundo Martí para la Liberación Nacional (FMLN) y durante más de una década se desarrolló una guerra civil (1980-1992) en la que intervinieron organismos estadounidenses como la CIA, en el contexto de la Guerra Fría (Acuña 2017). La paz se negoció con los Acuerdos de Chapultepec en 1992, seguidos por un periodo de alternancia política entre la Alianza Republicana Nacionalista (ARENA, que gobernó entre 1989 y 2009) y el FMLN convertido en partido político (que gobernó entre 2009 y 2019). Los sucesivos proyectos políticos de ciudadanía no se orientaron a construir un marco amplio de derechos y libertades: prevaleció una ciudadanía silenciosa, con círculos críticos reducidos y represión a la protesta. Fueron los grupos religiosos —sobre todo la Iglesia católica con el movimiento de la Teología de la Liberación en los años setenta y ochenta— quienes impulsaron la conciencia cívica (Magallón 2016).

La preeminencia de regímenes autoritarios durante gran parte de la historia salvadoreña constituyó una impronta política que preparó el terreno para la llegada de Nayib Bukele en 2019. Su discurso se fijó en una figura de autoridad-autoritaria con soluciones unipersonales y verticales, imagen aceptada por una cultura política proveniente de la polarización y la violencia extrema derivada de la guerra civil, el crecimiento de las pandillas —cuyos miembros habían sido deportados de Estados Unidos— y un Estado disminuido. La violencia de la Mara Salvatrucha, su dominio territorial, así como su control social y

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económico fueron el catalizador del apoyo a Bukele como figura populista neoconservadora que ofreció mano firme para ordenar la seguridad (Vásquez 2022; Obando 2024).

En cuanto al eje religioso en la política, cabe señalar que se trata de un elemento fundacional del Estado mismo —el nombre del país indica la centralidad del cristianismo en la sociedad—. El papel de los grupos religiosos en la arena pública trasciende lo social para asumirse como actores políticos. La Iglesia católica fue el actor preponderante, no solo como institución sino como componente de la cultura política salvadoreña. Históricamente estuvo cerca del poder estatal y de las élites, pero en los años sesenta y setenta, a raíz del Concilio Vaticano II, viró su atención hacia la justicia social, los pobres y la denuncia contra el Estado (Silva-Ojeda 2022). Un actor relevante fue el arzobispo Óscar Arnulfo Romero, cuya transición de posturas conservadoras a ser voz de una iglesia comprometida con el pueblo le confrontó con los grupos de poder, que terminaron asesinándolo durante un servicio religioso en 1980, al inicio de la guerra civil (Cardenal 2015).

La Iglesia contribuyó paradójicamente a un proyecto político de ciudadanía basado en la defensa de los derechos humanos al visibilizar la situación de pobreza e impulsar la reflexividad a través de las comunidades eclesiales de base. Esto costó que laicos y religiosos fueran perseguidos, exiliados, asesinados o terminaran participando en la guerrilla. Su huella en la construcción de ciudadanía fue notable: contribuyeron a una conciencia social que propició la transformación política con efectos en el retorno a la democracia en 1992 (Hernández Monterrosa 2019).

Los grupos evangélicos también incidieron en la construcción de esta finalidad. Estas iglesias llegaron desde Estados Unidos de la mano de misioneros financiados desde ese país. Durante la radicalización del conflicto, distintas iglesias evangélicas funcionaron como refugio ante la violencia e impulsaron programas de conversión, otorgando servicios sociales y apoyos materiales a comunidades (Lara 1990). La migración jugó un papel relevante: muchos salvadoreños encontraron en las iglesias cristianas y evangélicas de Estados Unidos apoyos para sobrevivir, lo que impactó también en las familias que permanecieron en El Salvador, al promover el crecimiento de esas iglesias en el país centroamericano (López Torres 2025). Si bien las iglesias evangélicas no contribuyeron directamente a una ciudadanía crítica, sí fomentaron redes de solidaridad y acompañamiento en momentos de tensión social.

¿La Constitución política de este país centroamericano define al Estado como laico? La Constitución vigente, aprobada en 1983, no se

declara formalmente laica. Se asumió de manera implícita que el Estado era laico al garantizar la libertad de culto (Artículo 25) y sancionar la discriminación religiosa (Artículo 6). Sin embargo, la libertad de culto no define una separación política de lo religioso: indica que todo culto puede ser practicado, pero no establece límites entre lo político y lo religioso. El preámbulo constitucional declara que es la creencia en Dios la que fundamenta al Estado mientras que en el artículo 26 "Se reconoce la personalidad jurídica de la Iglesia Católica. Las demás iglesias podrán obtener, conforme a la ley, el reconocimiento de su personalidad"[7], lo cual invisibiliza toda creencia o práctica fuera del catolicismo —aunque no las prohíbe—. Esta frontera difusa entre lo religioso y lo político fue el punto central sobre el cual los grupos religiosos, en el contexto contemporáneo y bajo el régimen de Bukele, obtuvieron protagonismo para justificar su política de seguridad y legitimar sus decisiones por encima de las instituciones.

El éxito político de Bukele y su reelección —cuestionada por su contradicción con normas electorales— no obedece únicamente a su carisma, sino a la eficacia percibida de sus decisiones en materia de seguridad pública frente al poder de las pandillas, que retaron al Estado quemando autobuses con personas dentro, controlando la vida y la economía de los ciudadanos, y traficando drogas y personas (Martínez Reyes 2025). La eficacia de su política autoritaria fue notable pero también brutal, sobre todo a partir de 2023, cuando se radicalizó la eliminación de estos grupos (Inter-American Commission on Human Rights 2024). Las redadas en los barrios, la detención y reclusión en cárceles de máxima seguridad de personas tatuadas sin juicio previo constituyeron violaciones sistemáticas a los derechos humanos: control del cuerpo, menoscabo de la dignidad y estigma social (Vásquez 2022; Obando 2024).

Para una ciudadanía históricamente marcada por el autoritarismo, la política de Bukele fue aceptada a pesar de sus costos en materia de derechos humanos. Los salvadoreños defendieron las redadas y la cárcel de máxima seguridad aun en contra de las recomendaciones de organismos internacionales como la ONU y la Comisión Interamericana de Derechos Humanos. No estaban dispuestos a ceder su seguridad por unos derechos que, en su percepción, habían favorecido a los delincuentes (Foro Laicidad, Género y Democracia[8] 2025).

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[7] Véase Constitución de la República de El Salvador. 1983. Disponible en: https://www.oas.org/dil/esp/constitucion_de_la_republica_del_salvador_1983.pdf

[8] Organizado por Centro Estudios de Género de la Universidad de El Salvador, Colectiva Feminista para el Desarrollo Local y Movimiento por una Cultura Laica.

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El modelo político de seguridad encontró eco en los grupos religiosos que lo apoyaron desde un discurso de salvaguarda de la nación, sus valores y su identidad cristiana. Las iglesias evangélicas y neopentecostales constituyeron la base sólida de apoyo religioso. Además de respaldar el programa político, encontraron afinidad ideológica en la defensa de la familia tradicional, el rechazo al aborto y la oposición a la identidad sexogenérica (Alharaca 2023). El discurso político se empataba con el religioso en la reafirmación de la autoridad del Estado como expresión del poder divino, justificando incluso el régimen de excepción para eliminar a las pandillas (Vásquez 2022). A este apoyo se sumaron alianzas con pastores de otras denominaciones cristianas, quienes acudían a actos oficiales y reuniones de oración pública (Ortiz 2021).

Si bien la historia familiar de Bukele remite a la migración palestina de raíz musulmana, su trayectoria personal se construyó en el cristianismo, sin alejarse de la pequeña comunidad musulmana del país. Este cristianismo manifiesto derivó en discursos con tintes religiosos: "milagro de la seguridad", "Dios me ha hablado" (Ortiz 2021).

No todo el sector religioso se decantó por apoyar la política de seguridad y la violación de los derechos humanos. En el sector evangélico, el pastor Mario Vega denunció el uso utilitario de la religión para fines políticos. La Iglesia católica criticó el modelo de seguridad, la reelección indefinida, el autoritarismo del Ejecutivo contra las instituciones del Estado, y la persecución de opositores y periodistas (Tovar 2022). Sin embargo, Bukele subrayó en su discurso político la relación con Dios y sus revelaciones divinas, lo que le valió reconocimiento y apoyo del sector evangélico afín, en contraposición a las denominaciones que lo criticaban (Paises y Olivares 2023).

4. **A manera de cierre: un proyecto político de ciudadanía desde el Estado, entre la libertad de conciencia y la libertad religiosa**

La laicidad en América Latina no constituyó históricamente un proyecto de ciudadanía, sino un dispositivo de legitimación del poder estatal frente al predominio eclesiástico. La laicidad fungió como concepto articulador de un proyecto político que confirió legitimidad al Estado para gestionar la vida social por encima de cualquier otra institución, como lo fue la Iglesia católica durante un prolongado periodo de la historia latinoamericana. Su función originaria fue transferir al Estado el control sobre los registros vitales, la educación, la

salud y la cultura política que administraba la Iglesia católica. El giro hacia una ciudadanía, articulada en derechos humanos, se produjo desde el inicio del siglo XXI, impulsado por la democratización regional que se materializó desde finales del siglo XX, la presión de organizaciones civiles y la necesidad de gestionar una diversidad religiosa en expansión. Esta transición —de la separación institucional a la garantía de las libertades civiles, fundamentales para el ejercicio de los derechos humanos— constituye el hallazgo histórico central del análisis.

El análisis comparativo de las tres experiencias nacionales revela una tensión transversal entre dos lógicas de derechos. La primera, articulada en torno a la libertad de conciencia, reivindica el ejercicio individual para decidir por encima de marcos morales y religiosos, con el Estado como garante de esa autodeterminación. Desde esta lógica, México expandió los derechos sexuales y reproductivos, el cambio de identidad y la discusión sobre eutanasia, pero también presenció la configuración y expansión de los movimientos neoconservadores antigénero. En Bolivia, la libertad de conciencia posibilitó no solo un ejercicio individual sino de derechos culturales y sociales de comunidades que invocaron sus tradiciones para evitar la imposición de programas sustentados en valores religiosos ajenos. En El Salvador, la resistencia de grupos feministas y activistas a favor de la laicidad demandó la efectividad de los derechos legalmente reconocidos, pero la agenda garantista no encuentra eco en una población que privilegia la seguridad sobre las libertades.

La segunda lógica, articulada desde la libertad religiosa, constituye la demanda de los grupos confesionales —sean progresistas o neoconservadores— a no ser excluidos de la esfera política. Ambos sectores exigen visibilidad, aunque con fines divergentes: los primeros buscan ampliar los derechos; los segundos, conservar el orden y la cohesión frente al relativismo moral. En los tres países, los puntos críticos donde se ha hecho efectiva la libertad religiosa coinciden con momentos de máxima tensión: en México, la crisis de seguridad y la polarización política abrieron espacios institucionales para las iglesias; en Bolivia, la crisis política de 2019 y la fractura interna del MAS catalizaron la disputa simbólica entre la wiphala y la Biblia; en El Salvador, la crisis de seguridad legitimó la fusión del discurso político autoritario con el discurso religioso.

En ambos casos, los actores políticos han instrumentalizado estas tensiones. Los grupos en el poder utilizan la inclusión de lo diverso como argumento de relativización moral, mientras los defensores de la libertad religiosa enfatizan la solidaridad social y los recursos que

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aportan las comunidades confesionales para reivindicar no solo el derecho a ser escuchadas, sino a codecidir con el Estado. La distinción conceptual entre ciudadano y creyente, que en la ortodoxia teórica de la laicidad no era negociable, se ha vuelto insostenible en el nuevo contexto de reconocimiento de la diversidad —donde la exclusión de lo religioso de lo político ya no opera de facto—. Lo que sí constituyó un consenso general fue la necesidad de reconocer y visibilizar lo religioso en la agenda social y política, respetando mínimos éticos de dignidad y evitando tanto el uso estratégico del argumento de la discriminación como la equivalencia entre ética cívica y ética religiosa.

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Migración, identidad religiosa y derechos humanos: el caso de la población musulmana bangladesí en la India

Migration, religious identity and human rights: the case of Bangladeshi Muslims in India

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Sumario: Introducción. 1. Claves del contexto histórico y político para entender el conflicto político actual con respecto a la inmigración bangladesí en la India. 2. Inmigrantes musulmanes en la nación Hindú: Las retóricas sobre la "infiltración" que legitiman las exclusiones. 3. La política pública y la *Citizenship Amendment Act* 2019. Conclusiones. Bibliografía.

Resumen: Este artículo explora y examina la representación en los discursos de los partidos políticos de la India sobre la población migrante musulmana bangladesí en el país, ahondando en particular en la reciente retórica nacionalista hindú. Para ello, se analizan las retóricas discriminatorias, así como las prácticas sociopolíticas excluyentes, examinándolas desde una

perspectiva crítica del discurso. Comienza contextualizando los principales acontecimientos políticos e históricos del sur de Asia, lo que permite comprender y situar los debates actuales sobre la inmigración musulmana bangladesí en la India. A continuación, analiza la Ley de Enmienda de la Ciudadanía (2019) para investigar el impacto sobre la religión como elemento de estratificación de los derechos de las personas migrantes musulmanas. Finalmente, destaca y ejemplifica brevemente la diversidad religiosa y la inclusión en los procesos políticos en aras de diseñar políticas públicas que no atenten contra los principios seculares de la Constitución.

Palabras Claves: Inmigración bangladesí musulmana, religiones, India, políticas públicas, islamofobia, autoritarismo hinduista.

Abstract: This article explores and examines the representation in the discourses of political parties in India about Bangladeshi Muslim migrants in the country, delving in particular into the recent Hindu nationalistic rhetoric. In order to do so, it analyses the discriminatory rhetorical questions as well as exclusionary socio-political practices and examine them through a critical discourse lens. It begins by contextualizing major political and historic events in South Asia that enable us to understand and situate the present-day debates regarding Bangladeshi Muslim immigration in India. Next, it analyses the Citizenship Amendment Act (2019) to investigate the impact on religion as a stratifying element of the rights of Muslim migrants. Finally, it briefly highlights and exemplifies religious diversity and inclusion in political processes in order to design public policies that do not violate the secular principles of the Constitution.

Keywords: Bangladeshi Muslim immigration, religions, India, public policies, islamophobia, Hindu authoritarianism.

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Introducción[1]

En el contexto de la India, el debate sobre las dificultades de coexistencia con las personas inmigrantes está centralizado, fundamentalmente, en quienes proceden de los países (ahora) vecinos como Bangladesh, Pakistán, Sri Lanka, Myanmar y Nepal que, hasta muy recientemente, fueron parte una misma entidad nacional. Aunque históricamente el Estado de la India se ha considerado como de "acogida segura" para las personas desplazadas que huyen de guerras y persecuciones de sus países, lo cierto es que la India no tiene una legislación nacional para proteger la figura jurídica del refugiado, ni ha ratificado la Convención sobre el Estatuto de los refugiados de 1951, ni el protocolo sobre el Estatuto de los Refugiados de 1967 (Vats 2025). Ello conlleva que no haya existido una normativa que proteja, ni aborde de manera integral la situación de esta población, y menos aún, los procesos de coexistencia e integración.

En su política reciente de gestión de inmigración destaca la *Citizenship Amendment Act* (en adelante CAA) aprobada en 2019, normativa que no diferencia claramente entre personas inmigrantes y refugiadas (Paliath 2025) sino que recoge que los poderes públicos simplemente administran y controlan la entrada y deportación de personas "extranjeras" así como los temas de ciudadanía. La ausencia de un marco exhaustivo y una categoría amplia de "extranjero" en esta ley perjudica directamente los derechos fundamentales de quienes se desplazan, chocando frontalmente con los protocolos internacionales de protección de los derechos de personas inmigrantes y refugiadas. En septiembre de 2025, ha entrado en vigor una nueva Ley de Inmigración y Extranjería (que desplaza a la *Foreingers Acts* de 1946[2]) que, en línea con los argumentos previos, busca consolidar el marco migratorio de la India con un sistema jurídico único y más integrado.

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[1] Texto escrito mediante la discusión compartida de todos los apartados, incluida la redacción de los contenidos, el diseño de la estructura, la introducción y las conclusiones. Khushbu Kumar lidera el punto primero como especialista en La India y Bangladesh, con el primer soporte de Belén Blázquez desde la Ciencia Política y el segundo apoyo de Belén Agrela desde su especialización en los Estudios Migratorios. La parte 2 del texto está trabajado principalmente por Khushbu Kumar y Belén Agrela como experta en migraciones. La parte 3 está elaborada por Khushbu Kumar y Belén Blázquez como experta en políticas públicas.

[2] Junto a esta normativa, también sustituye la Ley de Pasaportes de 1920, la Ley de Registros de Extranjeros de 1939 y la Ley de Inmigración (Responsabilidad de los Transportistas) de 2000.

En el caso de las personas inmigrantes musulmanas bangladesíes, la falta de leyes orientadas hacia la integración social y el reconocimiento de los derechos humanos en coherencia con los derechos internacionales y universales, les impacta de una manera altamente desproporcionada. En los últimos doce años, desde que ascendió al poder gubernamental en 2014 el partido conservador Bharatiya Janata Party (BJP), se ha intensificado la filosofía del gobierno cuyo objetivo final pasa por la creación de una nación completamente hindú, cristalizando una jerarquía de derechos y beneficios para la población nacional de religión hindú y, por derivación, hacia inmigrantes hindúes en detrimento de la población musulmana.

El discurso político de este partido se concretó en el año 2019 con la ya mencionada aprobación de la CAA por el Parlamento. En dicha normativa, se aceleraba la concesión de la ciudadanía a población inmigrante perseguida por motivos religiosos que hubieran llegado al país con anterioridad a 2014, siempre y cuando no fueran musulmanes. Es decir, discriminaba a un grupo específico en beneficio de otro, chocando con el laicismo que define al Estado-nación indio en su Constitución de 1950. El BJP amenaza de este modo la protección de derechos e intereses de las personas inmigrantes musulmanas en tanto se les retrata como un "riesgo" para la seguridad nacional india, entrando en conflicto con partidos políticos como *Indian National Congress* (INC) y *Communist Party of India-Marxist* (CPI-M-) que favorecen la presencia de personas musulmanas. Ambas ideologías dan cuenta de las dificultades de una convivencia armoniosa entre unas y otras comunidades religiosas (Kalita 2017).

En los últimos años, la imagen a nivel internacional sobre la responsabilidad del Estado-nación de la India en relación al respeto y protección de los derechos humanos de las personas inmigrantes y refugiadas, particularmente musulmanas, se ha deteriorado significativamente. Organizaciones como la Oficina de Derechos Humanos de la ONU, la Organización de Cooperación Islámica, la Comisión de los Estados Unidos para la Libertad Religiosa Internacional o Amnistía Internacional han compartido inquietudes acerca del aumento de islamofobia en la India y la violación de los derechos fundamentales de la población musulmana (Maizland 2024). Esto se ha materializado en políticas en las que las cuestiones relacionadas con la inmigración están centradas más en vigilar el número de las personas extranjeras que podían "aceptarse" en el país en función de su identidad religiosa y, no tanto, en formular un marco legal que ajuste los principios de secularismo y diversidad. Según los Artículos 2 y 13 de

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la Declaración de los Derechos Humanos (1984), toda persona posee el derecho de igualdad y el de disfrutar de sus derechos sin ningún tipo de discriminación por razones de raza, religión, sexo e idioma, así como la libertad de movimiento y residencia (Naciones Unidas 1948). El Estado es el organismo principal que debe garantizar la protección de los mismos y promover aquellas políticas públicas que favorezcan la inclusión de todas las personas, con independencia de si son ciudadanas nacionales, extranjeras o la religión que practiquen. Sin embargo, los intereses de partidos populistas, fundamentalistas y cada vez más islamófobos en la India están institucionalizando diversas formas de racismo oficial, distanciándose de una ideología y práctica política de coexistencia.

Teniendo en cuenta los principios seculares consagrados en la Constitución India (1950), y según las normativas internacionales de protección de los derechos de los grupos minoritarios, especialmente cuando refieren a la religión, resulta ineludible generar estudios que analicen cuestionando los *decires* y *haceres* de las organizaciones gubernamentales. Consideramos necesario plantear el caso indio para examinar los tipos de prácticas excluyentes hacia personas inmigrantes musulmanas, teniendo en cuenta que la India tiene 200 millones de población musulmana "propia". Ello nos dará herramientas para comprender cómo se abordan en la India temas relacionados con la islamofobia. En este sentido, resulta muy revelador analizar las nociones de representación de inmigrantes musulmanes bangladesíes por la política conservadora y percatarse de cómo los estereotipos islamófobos contra habitantes musulmanes indios no distan tanto de lo que está ocurriendo en otros contextos mundiales. En síntesis, estimamos pertinente analizar si las normativas de la política conservadora hindú, junto con las prácticas excluyentes hacia quienes son migrantes musulmanes bangladesíes, podrían estar infringiendo el acceso a los derechos humanos, promoviendo una discriminación religiosa y una cristalización cada vez más estructural de las desigualdades.

Con este artículo aportamos nuevos elementos que permiten conocer este contexto geográfico, que sigue siendo un gran desconocido en algunos entornos académicos y sociales occidentales, teniendo en cuenta la escasez de la literatura que intersecciona la noción de musulmaneidad como retórica de exclusión en la India, especialmente referida a la población bangladesí. Varios autores han analizado la presencia de inmigrantes bangladesíes en la India discursada como *problema;* Shamshad (2017) se ha centrado en los discursos nacionalistas sobre esta población migratoria; Ramachandran

(2019) ha analizado las retóricas excluyentes y las representaciones a través de las categorías de "ilegal" o "infiltrados", así como la política xenofóbica de los partidos conservadores hindúes en la India; Samaddar (2012) ha ahondado profusamente sobre las fronteras, los contextos históricos y culturales entre Bangladesh y la India así como sobre la ciudadanía india.

Todo lo anterior nos ha llevado a examinar el papel que tiene el aspecto religioso como retórica de exclusión de las personas inmigrantes musulmanas y las dimensiones históricas y estructurales que explican el modelo de no coexistencia democrática actual. Se parte de un análisis crítico de la gobernanza con la inmigración como herramienta interdisciplinaria para determinar cómo el auge de la islamofobia afecta perjudicialmente a migrantes musulmanes, y más concretamente, a bangladesíes. En el caso de la India, la religión, el origen étnico y el idioma son componentes significativos del Estado-nación y de la identidad nacional, en consecuencia, la noción inmigratoria siempre ha estado altamente politizada (Shamshad 2017).

Para acercarnos a este análisis, en primer lugar, desde una perspectiva poscolonial e historiográfica se contextualiza y analiza el debate actual a partir de ciertos eventos históricos relevantes para poder después comprender la realidad en la que acontece la inmigración específica de musulmanes bangladesíes. Para ello, se enmarcan las referencias claves a partir del marco histórico-político reciente de la construcción del Estado-nación. Además, desde el 2018 al 2025, mediante el análisis de contenido, hemos registrado discursos de alto impacto de diversos políticos relevantes del BJP, tomándolos como muestra de "tecnologías políticas" (Shore y Wright 1997) por su poder para construir "realidades" sobre las que se gobierna. Las categorías de análisis de las narrativas han sido codificadas usando el software *Voyant Tools*. A continuación, se destacan y examinan las prácticas de exclusión de esta comunidad de inmigrantes a través de ejemplos cotidianos, acciones excluyentes y sus impactos en estos sectores de población, centrándonos en el periodo que abarca desde 2019 a 2024. Se dedica una especial interpretación analítica sobre la CAA (2019) para evidenciar el peso significativo que la política pública contemporánea india otorga a la religión en la gestión de la inmigración. Finalmente, concluimos reflexionando sobre las formas en las que, en este contexto concreto, se podría pensar en procedimientos para administrar la diversidad en sentido inclusivo, así como de coexistencia, en relación a las personas inmigrantes musulmanas en la India.

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1. Claves del contexto histórico y político para entender el conflicto político actual con respecto a la inmigración bangladesí en la India

Históricamente, desde 1858 hasta 1947, se conoció como India británica al régimen colonial instaurado por el imperio británico que englobaba a Bangladesh, India y Pakistán (Ambedkar 1940). Posteriormente, en 1947, fue particionado e independizado, dando lugar a la creación de los Estados soberanos de la India y Pakistán. El propósito final fue crear dos naciones separadas: 1) India, con una población de mayoría religiosa principalmente hindú, que incluía también otras comunidades religiosas; y 2) Pakistán, con una población mayoritariamente musulmana. El país de Bangladesh (conocido entonces como el East Pakistán) era parte de Pakistán, con una población fundamentalmente de religión musulmana pero étnicamente *Bengalí,* cuyo idioma *bengalí* era similar al Estado vecino indio de Bengala Occidental. Sin embargo, en 1971, con el apoyo de la India, Bangladesh se liberó de Pakistán, constituyéndose como un país independiente. Debido a los estrechos vínculos histórico-políticos entre la India y Bangladesh, en un primer momento, se produjo un desplazamiento poblacional: entre 7,5 y 8,5 millones de personas refugiadas emigraron a la India (ACNUR 1972) lo que posteriormente se convertiría en un enfrentamiento entre ambos países (Ranjan 2016).

Sin embargo, el inicio de esta migración se remonta a la época británica, cuando los enclaves de Dhaka y Calcuta se instituyeron como centros de empleo y demanda de mano de obra, periodo en el que estas regiones estaban unificadas (Rajan 2023). La Bengala unificada experimentó dos particiones: primero, en 1905, por la administrativa colonial británica, que afirmó dividirla por ser sumamente vasta para ser gestionada (aunque los políticos indios lo consideraron como una forma de "dividir y gobernar", particularmente personas hindúes y musulmanas). Estas regiones fueron reunificadas en 1911 gracias a los movimientos nacionalistas indios. La segunda partición en 1947, acometida por el gobierno británico, dividió de forma permanente la Bengala unificada en dos regiones: Bengala Occidental (actualmente el Estado de la India) y Pakistán Oriental (actualmente Bangladesh) (Shamshad 2017).

La frontera internacional denominada *Radcliffe Line,* nombrada así por Cyril Randcliff, el encargado de delimitar la línea divisoria entre la India y Pakistán (y Bangladesh actual), se extiende a lo largo de 4.095 kilómetros en los que bifurca Bangladesh y cinco Estados indios —West Bengal, Assam, Tripura, Mizoram y Meghalaya—, de los cuales existen

1.500 kilómetros de frontera vallada. Es considerada como una zona fronteriza inmensamente "porosa", al ser un terreno geográfico agreste con zona ribereña y forestal que dificulta el proceso de cercado, lo que posibilita, a menudo, el tránsito de personas, al tiempo que constituye una de las preocupaciones políticas más disputadas y relevantes entre ambos países (Nanda 2005).

Una vez fronterizados los territorios, la que antes fuera considerada como migración interna, tras la partición de 1947 se transformó en migración internacional al convertirse en un desplazamiento entre fronteras internacionales entre la India y Pakistán Oriente y, posteriormente, en 1971, entre los soberanos países de la India y Bangladesh (Van Schendel 2005). Todo ello se materializó en una confrontación entre la religión hindú y la musulmana, siendo el centro de varios debates en la región, con amplia incidencia en la geopolítica del Sur de Asia desde la partición de la India británica (Ghosh 1993). Las formas ideológicas y políticas de entender la existencia de "dos mundos religiosos" opuestos y enfrentados ha tenido importantes consecuencias directas sobre la vida social y política de las personas musulmanas en la India, reforzando tanto su marginalización, como la invisibilización de los problemas de otras comunidades religiosas en la región.

Una de las herencias más significativas del dominio del imperio británico fue el fomento de la tensión entre ambas comunidades religiosas. En este sentido, los distintos censos británicos realizado entre 1871-1872, 1891 y 1911, clasificaron a la población india según la religión que profesaban, la casta a la que pertenecían o el género (Essa 2023) dando lugar a una comunidad, la hindú, mayoritaria y, por oposición, la musulmana como minoritaria. Desde este momento, la pertenencia al país empezó a ser considerada en términos de identidad religiosa (Samarendra 2008). El historiador Gilmartin (2015) destaca cómo los intereses de las élites políticas indias del *Indian National Congress* y de los líderes de *Muslim League* contribuyeron a reforzar las (enfrentadas) identidades culturales. Junto a esta contienda política, las interpretaciones sobre "la partición" se centraban predominantemente en los debates sobre los conflictos religiosos entre hindúes y musulmanes, así como en la división territorial, ignorando que la religión también tuvo un papel vital para formar el sentimiento de pertenencia y reivindicar los derechos de ambos. Tanto el imperio británico como los partidos políticos actuales han politizado el uso de la musulmaneidad para sus beneficios políticos y electorales, siendo igualmente la génesis del conflicto actual entre estas comunidades religiosas. El hecho político de "la partición" junto con la pretensión

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del comunalismo[3] religioso son interpretados por historiadoras e historiadores enfocados predominantemente en los debates sobre nacionalismo, secularismo y sucesión; sin embargo, apenas abordan el rol de la religión en "la partición" para articular los derechos y formar identidades (Samaddar 2012).

Desde "la partición", la religión en la geopolítica del sur de Asia constituye un aspecto crucial para decidir la pertenencia a un país, controlar las movilidades de las personas entre los países, y abordar temas de ciudadanía. Después de los años de la independencia, los partidos nacionalistas hindúes, el *Jana Sangh* y, más tarde el *Bharatiya Janata Party*, se sirvieron de la violencia anti musulmana para dividir a las masas y fortalecer el "banco de votos" hindú, lo que alimentó principalmente los disturbios entre hindúes y musulmanes en la política india (Jaffrelot 2010)[4].

En el momento actual, estas retóricas de exclusión basadas en la religión siguen vigentes directamente conectadas con la ideología de la supremacía hindú, manifestándose en el rechazo hacia las personas musulmanas, especialmente de origen bangladesí. Este debate toma cuerpo en la conocida como "la cuestión de la infiltración", aludiendo a las personas inmigrantes bangladesíes que aparecen en las campañas electorales de los partidos políticos indios como *Aam Aadmi Party* (AAP), *Bharatiya Janata Party* (BJP) o el *Shiv Sena*. Noción de infiltración que evoca al (supuesto) riesgo e inseguridad que la presencia de bangladesíes musulmanes implica para la nación india (Sengupta 2025). Aunque el BJP postula dejar atrás las diferencias creadas por la historia de "la partición", en las líneas políticas propuestas por el partido, las perspectivas sobre las poblaciones migrantes musulmanas siguen siendo instrumentalizadas a partir de este hecho histórico (Gilmartin 2015). A nivel nacional, los miembros de estos partidos han politizado la narrativa de la inmigración bangladesí de manera xenófoba y discriminatoria, como forma de obtener rédito en la consecución de más votos de la población hindú de la India.

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[3] Se entiende por comunalismo la violencia estructural física, moral y simbólica contra musulmanes.

[4] Es importante mencionar los sucesos acaecidos el 6 de diciembre de 1992, cuando el BJP (junto al partido Vishva Hindu Parishad) movilizó a un gran número de población hindú, la cual atacó y demolió la mezquita Babri Masjid del siglo XVI en Ayodhya, argumentando que era el lugar donde se encontraba el templo del Dios Rama. Este hecho permitió al citado partido político convertirse en la segunda fuerza política del país provocando numerosos enfrentamientos interreligiosos con más de 2000 muertos. En septiembre de 2024, el primer ministro, N. Modi, inaugura el templo de RAM, construido donde estaba la mezquita de Babri (a iniciativa del BJP).

Dentro de la ideología política del nacionalismo hindú (*Hindutva)*, quienes son musulmanes son considerados como "extranjeros", y desde que decidieron establecer un país separado de Pakistán en 1947 con la mayoría musulmana, se les representan como "traidores" o "desleales" (Maizland 2024). En este sentido, ha habido múltiples incidentes en los que las personas musulmanas se ven obligadas a entonar el eslogan hindú de "Jai Shree Ram" (Salve Señor Ram) para evidenciar su lealtad a la India o proporcionar documentos relevantes para verificar su ciudadanía india durante la protesta de la CAA de 2019. La exteriorización reiterada de su sumisión hacia el Estado es una constante para ser aceptados (Apoorvanand y Gogoi 2019). Es decir, de partida se les piensa desde la otredad, la deslealtad, el colectivo intruso que está en un territorio aspirando a unos derechos que no les son propios. Los impactos y la influencia de las divisiones consolidadas con las fronteras religiosas persisten hoy en día en la vida cotidiana, tanto a nivel social como político. Estas maneras de pensar se cristalizan en prácticas socio-políticas de discriminación y marginación rutinaria, como se muestra, por ejemplo, en los anuncios de alquiler de pisos cuando frecuentemente se advierte: "Sólo para vegetarianos"[5]. En consecuencia, en este contexto geográfico tan particular, resulta esencial revisar las políticas públicas de coexistencia religiosa y reflexionar sobre propuestas innovadoras que posibiliten una gestión de mayor apertura sobre las múltiples aristas que confluyen y conviven en la diversidad en la India.

En el argumentario político de la inmigración india, el componente religioso es cada vez más abiertamente central; cuando se trata de aceptar mano de obra, se favorece a quienes son inmigrantes hindúes porque los sesgos / preferencias / exclusiones e islamofobias interseccionan en busca de un perfil ideal de inmigrante que no es el musulmán. No por menos, a la hora de aceptar o rechazar a inmigrantes por los regímenes, así como el acceso a la ciudadanía, influyen de manera interseccional el idioma, la religión compartida y/o la verificación de la afinidad étnica (Weiner 1992). Asimismo, en los Estados de Assam, Bengala Oeste y Tripura, donde el tema de migración bangladesí no tenía un ángulo religioso, en los últimos años se han postulado especialmente contra quienes son musulmanes

[5] En la India se produce una identificación entre el vegetarianismo y la identidad cultural hindú, al ser considerado como un indicador de los valores tradicionales hindúes. Asociando, de este modo, el consumo de carne con minorías religiosas y grupos marginados.

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bangladesíes. Por ejemplo, el Estado de Assam en India recibe a un número mayor de inmigrantes bangladesíes frente a otros Estados indios, lo que les sirve de justificación para alarmar sobre el tema de la pérdida de identidad cultural y lingüística y el poder político de la población indígena respeto a la migración bangladesí como un elemento prioritario.

Por tanto, el elemento religioso, si bien históricamente ha dominado el marco político en la India, en el escenario político actual se están radicalizando y magnificando tanto en la forma de los discursos retóricos peyorativos como en las normativas y prácticas regresivas.

2. **Inmigrantes musulmanes en la nación Hindú: Las retóricas sobre la "infiltración" que legitiman las exclusiones**

> *"After conducting an X-ray of your wealth, they will distribute it to infiltrators—Bangladeshi infiltrators, Pakistani infiltrators, or any other Muslim infiltrators"*[6] (Yogi Adityanath 2024)

En el mitin electoral de la asamblea de Jharkhand (21 de mayo de 2024), el Jefe del Gobierno Estatal de Uttar Pradesh, Yogi Adityanath, acusó al partido del Congreso Nacional Indio de querer, si llegaban al poder, imponer impuestos sobre los bienes de la población india para distribuirlos luego entre quienes se consideran como "infiltrados" que procedían de Bangladesh, Pakistán o musulmanes en general. Este argumentario es sólo uno de los muchos ejemplos de un discurso de odio dirigido a personas musulmanas, donde se declara abiertamente el sentido xenófobo del movimiento "manifestación anti-extranjeros" de Assam (1979-1985)[7]. En estos dos últimos años se ha popularizado este discurso y a nivel político se ha perdido el miedo a verbalizar abiertamente contra la inmigración desde la islamofobia.

En 1990, el BJP incorporó la cuestión de quienes siendo inmigrantes bangladesíes estaban en situación irregular como asunto religioso, etiquetando a inmigrantes hindúes como "refugiados" y a

[6] "Después de hacer una radiografía de tu riqueza, la distribuirán entre los infiltrados: infiltrados bangladesíes, infiltrados pakistaníes o cualquier otro infiltrado musulmán" (traducción propia).

[7] El resultado fue la aprobación de la *Illegal Migrants Determination by Tribunal* (IMDT) en 1983 para controlar la inmigración "ilegal" bangladesí en el Estado.

inmigrantes musulmanes como "infiltrados" (Lin y Paul 1995). El término militar de "infiltrado" (Bhaumik et al. 2020) resulta sumamente embaucador, en tanto se les piensa desde lo bélico, el enemigo, o el que viene a usurpar lo que le es ajeno. Argumentario que, en los últimos años, se dirige muy específicamente hacia bangladesíes musulmanes. El uso de este tipo de términos en los discursos políticos busca destacar la diferencia del aspecto religioso (musulmaneidad) asociada con la "ilegalidad" y la infidelidad al territorio soberano indio; en suma, se les muestra como una amenaza nacional "alarmante". El prejuicio histórico hacia el Islam forma parte del imaginario colectivo de la sociedad india y el Estado, especialmente desde los partidos políticos de ultraderecha, quienes sobredimensionan las amenazas percibidas como reales, tanto en términos de seguridad, como sociales, económicos y, muy especialmente, culturales.

En consecuencia, el miedo se traduce en la formulación de políticas de inmigración, tanto de control de fronteras como de integración, que legitiman las diversas prácticas de exclusión que se han ido institucionalizando (Weiner 1992). Los discursos de amenaza adquieren formatos donde se hiperbolizan los estereotipos que rodean la figura de las personas inmigrantes musulmanas bangladesíes, a quienes se les nombra como "avalancha musulmana", "ilegales", "indocumentados", "terroristas", "invasión musulmana silenciosa", "ciudadanos no deseados de Bangladesh" o "colonos silenciosos" (Ramachandran 1999). Estas proclamas islamofóbicas perfilan nociones de otredad, de fanatismo descontrolado, de guerrilla organizada que de forma sigilosa pareciera ser el mayor peligro del Estado nación y la explicación de todos los problemas internos. Las estigmatizaciones desde donde se les retrata (véase Imagen 1), asociadas a ser víctimas de *scapegoats* o chivos expiatorios de delitos y desempleo, tratados como criminales que necesitan ser vigilados y boicoteados por los grupos religiosos hindúes, empiezan a consolidarse como prácticas habituales (Jafri 2021). Estos discursos políticos les deshumanizan y les desproveen del reconocimiento de derechos, además genera hostilidad en la sociedad civil, dando lugar a la confrontación como herramienta para forjar el miedo que refuerzan unas políticas de rechazo y sirven como instrumento de los gobiernos para no tener que rendir cuentas. Esta creación de prejuicios, justificando la exclusión social y política, no sólo repercute en el comportamiento de la población musulmana india, sino, sobre todo, en la vida cotidiana de las personas inmigrantes musulmanas.

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Imagen 1.

Graffiti en las calles de Shaheen Bagh en la protesta de Shaheen Bagh

Fuente: Elaboración Propia[8]. Nueva Delhi, 5 enero de 2020.

Estas proclamas de marginalización y exclusión política sistemática son propias de los partidos políticos de derecha, como el BJP, y de

[8] Las imágenes forman parte del trabajo de campo realizado por K. Kumar durante su estancia de investigación en el 2020.

centro, como el AAP (Mahmudabad 2020). En este sentido, el AAP muestra cada vez con frecuencia más creciente y de manera manifiesta una postura antiinmigrante, que se concretó en el 2024 en la institución de la vigilancia, identificación y abstención de matrículas de "los y las inmigrantes ilegales bangladesíes" en las escuelas gubernamentales en Delhi (Sengupta 2025). Restringir el acceso a la educación es una violación de un derecho primordial que impacta sobre la diversidad cultural en las escuelas, que consolida y perpetua la amenaza, real o percibida, a poder ser sujeto deportable. La racionalización de adoptar una legislación y unas prácticas sociales más estrictas para reforzar la seguridad y la fronterización en el acceso a los recursos públicos de la migración bangladesí musulmana en pro de la "seguridad nacional" se convierte en el motivo fundamental de los discursos políticos (Das y Anisujjaman 2022). Tanto quienes son inmigrantes musulmanes como quienes son musulmanes indios son objetos de exclusión y segregación a través de prácticas rutinarias como la violencia de las turbas por los hindúes que atacan a "los otros" en espacios públicos; el boicot económico de sus negocios; las campañas de demolición de las chabolas y la destrucción por las autoridades locales de las tiendas de negocios de inmigrantes musulmanes; los reiterados discursos políticos de odio o el linchamiento por consumir la carne de vaca (Paul 2022; Faisal 2025b).

En este sentido nos encontramos con "los excavadores de justicia", como expresión empleada por los críticos, activistas y periodistas (Mahmudabad 2022) para referirse a las excavadoras que utiliza la policía hindú para la demolición de las propiedades de personas musulmanas inmigrantes. Estos tractores no son solo máquinas de destrucción palpables, sino que también atribuyen la representación simbólica de quien detenta el poder para desmantelar y hacer patente una política de odio y control hacia musulmanes por el BJP (Pradhan 2022). Aunque hay una diferencia entre el musulmán bengalí (persona cuya etnia es bengalí, que profesa la religión del islam, pero que no es necesariamente indio) y un inmigrante musulmán de habla bengalí de Rajastán o Bengala Occidental (que habla el idioma bengalí y es musulmán y son indios), el Estado nación indio con frecuencia considera a ambos como "bengadesís ilegales" y los etiqueta por igual como "infiltrados" (Gurmat 2025). En consecuencia, por añadidura a la destrucción de sus viviendas y posterior deportación de bangladesíes sin el debido proceso legal, quienes son musulmanes indios igualmente se convierten en los chivos expiatorios de estas medidas, quedándose sin hogar y apátridas. En el caso particular de las mujeres, ellas se ven aún más "atropelladas", si cabe, dado que suelen tener a personas

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dependientes a su cargo, a menudo con discapacidades y frecuentemente menores no acompañados.

El supuesto aumento constante de la población musulmana es también una razón esgrimida por el nacionalismo hindú para controlar, al servirse del miedo a convertirse en una minoría en la India (Paul 2022). Estas consideraciones derivan de la *Hindutva,* la ideología dedicada a promover el nacionalismo hindú y la unidad nacional, los valores que se imaginan como propios del Estado, y el dominio y posición de jerarquía de las personas hindúes en la India. Uno de sus objetivos principales es establecer una nación (*rashtra)* hindú. Sus proponentes pretenden marginalizar a la comunidad musulmana mediante la erradicación del Islam, a cuyos practicantes les consideran como "invasores" (Khan y Lutful 2021).

Al igual que el nacionalismo étnico europeo, el nacionalismo hindú centra la identidad nacional en elementos religiosos, lingüísticos y raciales, basándose en el aforismo "hindú, hindi e Indostán" (Ansari 2016). El partido político nacional de BJP, que está en el gobierno central desde 2014, y el partido político regional de *Shiv Sena,* son los que sustentan la ideología política de *Hindutva*. "Un tema recurrente dentro de la retórica del BJP ha sido describir los sufrimientos de todos los hindúes en Bangladesh en términos de atrocidades violentas infligidas por «fanáticos» musulmanes, restricción de la observancia religiosa y políticas oficiales de discriminación y comunalismo" (Gillan 2002, 84). Aunque quienes practican el Islam forman la minoría más grande en la India, según las retóricas de ambos partidos políticos conservadores, no son "los hijos de la tierra" porque, aunque pudiera parecer que se han asimilado con la población mayoritaria hindú, la realidad es que la India no está pudiendo integrar a la población musulmana de manera efectiva, tal como ocurre en Europa, Australia y/o Estados Unidos en cuanto a la inclusión y protección de los derechos de la personas musulmanas (Khan y Lutful 2021).

Ante este panorama, la India afronta un reto significativo para proteger y promover los derechos de las minorías y las personas inmigrantes, debiendo abordar los temas de desigualdad, discriminación social e institucional que ponen en peligro la diversidad cultural y religiosa, siendo competencia estatal la gestión de esta diversidad desde un reconocimiento de derechos e implementando políticas públicas que faciliten una coexistencia pacífica. Existe, por tanto, una necesidad de generar prácticas sociales de inclusión tanto a nivel estatal como regional y local para evitar la imposición de la hegemonía de la mayoría hindú a nivel político, ideológico, social y legislativo. No obstante, para comprender el momento actual y las

maneras en las que las políticas públicas gestionan la diversidad cultural y religiosa, resulta imperativo partir del análisis de la CCA (2019) que sirve de soporte para la acción social pública en materia de inmigración, pero también como andamiaje para reflexionar sobre las posibles opciones / contribuciones / acciones para pensar en la inmigración desde otros ángulos más inclusivos y posibilitar una coexistencia de la pluralidad religiosa en la India.

3. **La política pública y la *Citizenship Amendment Act* 2019**

La India, tras "la partición" e independencia optó por el principio de *ius soli* para conceder la ciudadanía india, rechazando el principio de *ius sanguini* y fundamentando la ciudadanía en los valores de la soberanía, el socialismo, el laicismo, la democracia, la justicia, la igualdad, la libertad y la fraternidad, sin favorecer una raza o etnia particular. Sin embargo, a partir de la década de los 80 este enfoque reformista se tornó cada vez más excluyente (Jayal 2019b) como ahora se expondrá.

La *Citizenship Act* de 1955 se decretó dentro del marco del artículo 11 de la Constitución india, e incluía ambas provisiones, *ius soli* e *ius sanguinis,* para conceder la ciudadanía. Esta normativa ha sido enmendada posteriormente en cinco ocasiones: en 1986, 1992, 2003, 2005 y 2016. Hay una sexta y última formulación, la que tuvo lugar en diciembre de 2019, promovida por el entonces presidente de la India y miembro del BJP, Ram Nath Kovind, cuyo gobierno aprobó una enmienda que establecía que las personas que llegaron a la India antes del 31 de diciembre de 2014, y que pertenecían a una de las comunidades hindú, sij, budista, jainista, parsi o cristiana de los países de Afganistán, Bangladesh o Pakistán, no serían consideradas como inmigrantes "ilegales" y se les concedería la ciudadanía india por la vía rápida (CAA 2019).

A través de esta enmienda, se otorgaba el reconocimiento de la ciudadanía, y el acceso a los derechos que ello comportaba, mediante un proceso de "naturalización" de su condición de extranjería, reduciendo la consideración de la misma de un período de 11 a 5 años, siempre que pudieran demostrar que eran nacionales de esos países. Por consiguiente, se favoreció la integración por vía legal de ciertas comunidades religiosas a quienes se les otorgó el privilegio de la ciudadanía en base a la nacionalidad y la religión profesada. El gobierno central liderado por el BJP justificó en sus discursos públicos la necesidad de esta rectificación afirmando que respondía a un interés

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nacional por proteger los grupos minoritarios —hindú, sij, budista, jainista, parsi o cristiana— en los países de Afganistán, Bangladesh o Pakistán (los cuales decían padecer una persecución religiosa por la mayoría musulmana). Si bien la ley en sí no contiene las palabras "persecución" o "perseguido", el gobierno central garantizó que otorgaría la ciudadanía india a las comunidades religiosas perseguidas (Malik 2020). Todo ello, sin olvidar también que la enmienda de 2003 (Ley de Ciudadanía) introdujo el requisito de la religión que se profesaba de manera encubierta, afectando a la minoría musulmana inmigrante de una forma desproporcionada. Dicha enmienda establecía que una persona nacida en la India no podía aplicar para la nacionalidad si uno de sus progenitores era inmigrante "ilegal". Esta cláusula impactó directamente sobre las personas inmigrantes musulmanas, dado que la mayoría de los bangladesíes en la India son musulmanes, y les convirtió en inelegibles para obtener la ciudadanía india. Esta medida fue impulsada por el Ministro del Interior, L.K. Advani, figura prominente del BJP, el cual advirtió en varias ocasiones que había entre 15 y 20 millones de bangladesíes en la India, retratándolos como una amenaza a la seguridad nacional, y fomentando "ansiedades demográficas" sobre la migración bangladesí en el país (Moodie 2010).

Igualmente, Advani presentó en el marco legal de 2003 el *National Register of Citizens* (NRC), una base de datos oficiales que contenía datos demográficos de todas las personas que cumplían con los criterios para registrarse con ciudadanía de la India, según la *Citizenship Act* de 1955. Bajo el gobierno de Nehru esta medida política había sido implementada por primera vez en Assam con datos del censo de 1951, pero el proceso de "actualización" está basado en el Acuerdo de Assam de 1985. Este acuerdo incorporaba al NCR a la ciudadanía que pudiera demostrar que ella o sus antepasados vivían allí antes de la medianoche del 24 de marzo de 1971. El objetivo del mismo era "detectar" inmigrantes "ilegales", pensado especialmente en inmigrantes bangladesíes. Dicho acuerdo, aunque aparentemente dio fin al enfrentamiento que había originado esta normativa, no lo hizo con las problemáticas derivadas de la obligación de identificación de la población inmigrante (Sufian 2022) Aunque esta medida todavía no ha sido aplicada en el resto de la India, buscaba sentar la base legal para un NCR a nivel nacional, *(India Today Web Desk* 2019) convirtiendo al registro oficial de la ciudadanía india en situación legal en una herramienta de control social puesto que, el gobierno, tendría un poder discrecional para demandar a cualquier persona ciudadana india que acredite su ciudadanía legal mediante el suministro de

documentos que cumplan con los requisitos legales. Todo ello, con el supuesto fin de demostrar si se es una ciudadana "auténtica", o en el caso contrario, estar descalificada por completo (Bhatia 2019).

En consecuencia, la población musulmana estaría más desprotegida (a pesar de que algunas de ellas procedían de minorías perseguidas como eran la ahmadíes y los hazares en Pakistán), al colocarla en una posición desigual, con mayores posibilidades para ser declarada como "ilegal" en el proceso de NRC. Dicha población no podría solicitar la nacionalidad india por medio de la CAA 2019, a diferencia de personas de las comunidades religiosas hindú, sij, budista, jainista, parsi o cristiana. En este sentido, bajo el NRC, si una persona hindú (inmigrante) es declarada "ilegal", aún podría obtener la nacionalidad india a través de las normas de CAA; sin embargo, una persona musulmana (inmigrante) que no logre evidenciar su estatus legal ya no sería elegible bajo la CAA (Khan 2020).

A través de la interconexión de estas dos políticas, el NRC y la CAA, el gobierno indio estructura el orden migratorio mediante una concepción autoritaria y fundamentalista basada en el privilegio del hinduismo excluyente. La política del NRC está enfocada a la autenticación y acreditación de la ciudadanía, mientras que la CAA se focaliza en determinar la ciudadanía de una persona según la nacionalidad de sus ascendientes y no según su lugar de nacimiento. Por ambos lados, las personas inmigrantes musulmanas quedarían despojados del derecho a la ciudadanía[9]. Es decir, las dos disposiciones no tienen las mismas consecuencias para hindúes y musulmanes, ya que quienes son hindúes que no están incluidos en el NRC, tienen ciertos privilegios y protección al poder solicitar la ciudadanía bajo la CAA. En tanto la enmienda de 2019 no menciona específicamente a las comunidades musulmanas, el texto escrito apunta a su exclusión sistemática e institucional de la obtención de la ciudadanía india. En este sentido, según la CAA de 2019, en su Tercer Anexo, cláusula (d) recoge que: "Siempre que, para la persona perteneciente a la comunidad hindú, sij, budista, jainista, parsi o cristiana en el Afganistán, Bangladesh o el Pakistán, el período total de residencia o servicio del Gobierno en la India, según lo exigido en esta cláusula, será, como «no menos de cinco años», en lugar de «no menos de once años».

Este fundamentalismo religioso por el que se rige la política de inmigración e integración en la India, que excluye por "naturaleza" a

[9] Es importante resaltar que las persecuciones hacia la población musulmana se realiza hacia todas las comunidades que profesan dicha religión, no sólo la bengalí.

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los grupos inmigrantes musulmanes, se ha enfrentado a muchas críticas por parte de la comunidad académica, personas expertas legales y organizaciones de derechos humanos, encontrándose incluso con protestas a gran escala por parte de la ciudadanía en todo el país (véase Imagen 2 y 3). La creación tan abierta de una no-ciudadanía de segunda clase provoca innumerables dificultades en la vida cotidiana de quienes son pensados desde la ajenidad. El no reconocimiento de la diversidad religiosa deviene en una imposibilidad para generar un contexto social de convivencia.

Imagen 2.

Protesta en el centro de Nueva Delhi contra CAA.

Fuente: Elaboración propia. Nueva Delhi, 5 enero de 2020.

Las personas declaradas "ilegales", quienes tampoco pueden tramitar la solicitud para la ciudadanía india bajo la CAA, adicionalmente pierden el derecho a residir en el territorio indio, sin otras alternativas legales. El gobierno no informó sobre el procedimiento a seguir de aquellas personas que no se podían amparar

en estas dos opciones, convirtiendo a parte de la ciudadanía india de estas comunidades religiosas en ciudadanos de segunda clase (Jayal 2019a). En el caso de Assam, ya mencionado anteriormente, se evidenció la exclusión de casi dos millones de habitantes locales (Bhaumik et al. 2020). De igual manera, si el NRC y la CAA se implementaran a nivel nacional, millones de personas quedarían apátridas, sin que el gobierno haya especificado qué ocurriría con las personas que no podrían solicitarla nuevamente. Por tanto, serían expulsables del país o recluidos en campos de detención, como algunas noticias que se propagaron esos días afirmaban. Este tipo de exclusión jurídica dejaría un segmento poblacional legítimo en una situación de indefensión, creando un entorno de miedo a la detención, ansiedad por perder sus derechos fundamentales e incertidumbre constante sobre su futuro como residentes legales indios. Ello, a pesar de haber podido nacer en el país o que sus antepasados hubieran sido nacionales indios desde hace siglos (Mohammad-Ari y Naudet 2021).

Una de las muestras más evidentes de las dificultades que supone esta enmienda de 2019 para la integración y convivencia se refiere a su entrada en conflicto directo con diferentes artículos de la Constitución India (1950) que defienden y garantizan la salvaguardia de los principios seculares básicos como la ley suprema del país, tales como el Artículo 5 de la Constitución de la India, que establece que "…al comienzo de la Constitución, toda persona que tuviera domicilio en la India y (a) que hubiera nacido en el territorio de la India; o (b) cualquiera de cuyos progenitores hubiera nacido en el territorio de la India; o (c) que haya residido habitualmente en el territorio de la India durante no menos de cinco años antes de dicho comienzo, será ciudadana de la India". La CAA invalida este artículo basándose únicamente en el requisito de la religión que se centra en los derechos de la población mayoritaria y excluyente de las minorías, en vez de aplicar los valores de pluralismo, inclusión y progresividad de la Constitución.

Además, la CAA entra en conflicto directo con el artículo 14 que garantiza igualdad ante la ley, la protección legal y la prohibición de discriminación arbitraria contra todas las personas, lo que incluye tanto a la ciudadanía como a la población inmigrante y extranjera en el territorio indio. Expresamente menciona que "el Estado no negará a ninguna persona la igualdad ante la ley ni la igual protección de la ley dentro del territorio de la India". En este mismo sentido, el artículo 21 refiere que "ninguna persona será privada de su vida o de su libertad personal excepto de acuerdo con el procedimiento establecido por la ley". Por tanto, existiría de nuevo una contradicción entre ambas normativas porque este artículo prohíbe despojamiento de los derechos

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fundamentales, en este caso, la negación de los derechos de libertad, dignidad y detención de la población musulmana sin un procedimiento legal y justo.

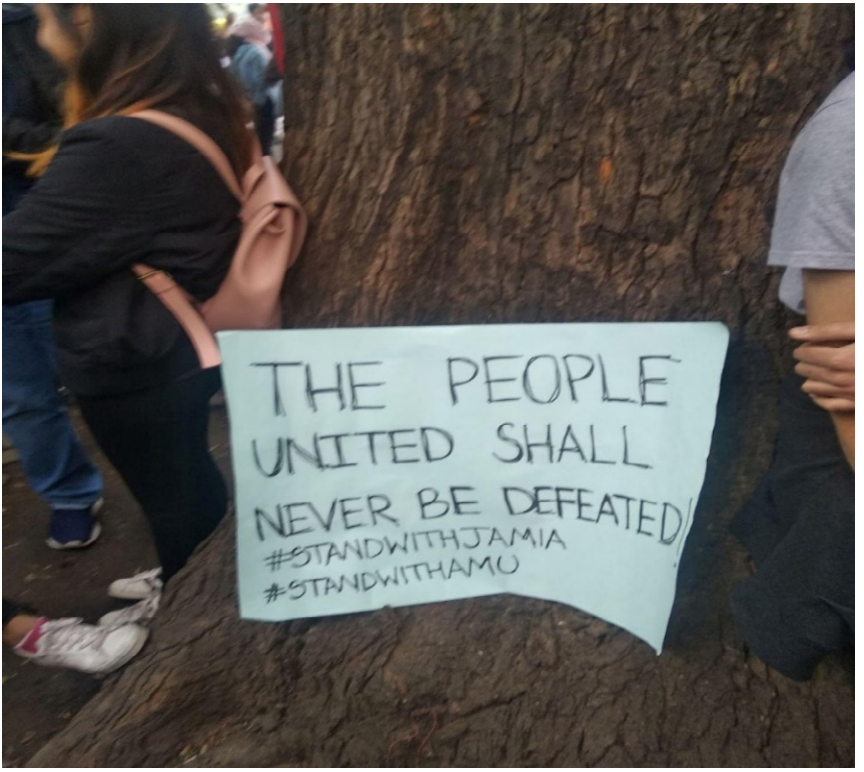
De estos tres artículos de la Constitución se puede establecer que: a) la ley contraviene el principio de *ius soli* para otorgar la ciudadanía de la Constitución india, que es la ley suprema del país, y b) la ley no brinda las mismas oportunidades a personas refugiadas musulmanas alejándolos de la obtención de la misma protección y derechos, lo que en última instancia restringe su libertad personal. Aunque el cambio del principio de *ius soli* al principio de *ius sanguini* para otorgar la ciudadanía no es un hecho reciente y ha estado presente parcialmente desde la enmienda de 1986 de la Ley de Ciudadanía, es la primera vez que la cuestión religiosa se define explícitamente de manera normativa, reforzando el argumentario de no otorgar la ciudadanía en función del nacimiento, sino del linaje. Así, la CAA es inequitativa e inconstitucional considerando que la regla del *ius sanguinis* reemplaza la regla del *ius soli* para conferir la ciudadanía, en la que la población musulmana o judía está directamente excluida. Adicionalmente, dicha ley demuestra la priorización a un solo tipo de persecución, la religiosa, e ignora otros tipos de violencias. Asociando, además, solo con tres países dicha persecución, a saber: Afganistán, Pakistán y Bangladesh (Parthasarathy 2020).

Las justificaciones para dar refugio a las personas que huyen de las persecuciones religiosas presentadas por el BJP para aprobar la CAA, en un primer momento, parecen favorables y humanitarias para cualquier comunidad minoritaria y con arreglo a los valores seculares de la Constitución India. Por ejemplo, Amit Shah, Ministro de Interior de la India, en una entrevista el diciembre de 2019 afirmó que, aunque "Pakistán, Bangladesh y Afganistán no forman parte de la India hoy debido a su población musulmana, creo que es nuestra responsabilidad moral y constitucional dar refugio a quienes fueron de Akhand Bharat y sufrieron persecución religiosa" (The Federal 2024). Esta aseveración, que pareciera ser un gesto amable por ayudar a personas que fueron parte de la India antes de "la partición" de "Akhand Bharat" (una India unificada con India, Pakistán, Afganistán, Bangladesh, Nepal, Bhutan, Tibet, Myanmar, Sri Lanka, y Maldivas), excluye a las personas musulmanas como merecedoras del mismo derecho a protección e igualdad, ya sea en aplicación de las leyes, de la ideología hindú conservadora o de los discursos de odio. Pese a su tono benevolente, la ley omite la persecución religiosa; esta falta de transparencia e incongruencia con el discurso genera sospechas sobre su fin real. En conclusión, la ley no adopta un enfoque inclusivo, coherente ni igualitario para otorgar la ciudadanía y su criterio explícito de religión

no tiene precedentes, creando una jerarquía de concesión de derechos, y contradiciendo los valores seculares de la Constitución india. Como resultado, hay cambios fundamentales marcados en la forma en que se formulan las leyes de ciudadanía y migración en el contexto actual, centrándose fuertemente en la religión.

Imagen 3.

Cartel en la protesta cerca del Jantar Mantar en Nueva Delhi contra CAA: *"La gente unida jamás será vencida"*



Fuente: Elaboración Propia: Nueva Delhi, 5 enero de 2020.

Conclusiones

La relación entre el nacionalismo hindú y la inmigración musulmana en la India de personas procedentes de Bangladesh es una

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muestra más de cómo los autoritarismos y grupos populistas de extrema derecha están fomentando discursos de odio y exclusión que dificultan el desarrollo de políticas públicas que favorezcan la coexistencia democrática. El escenario, aunque más desconocido para las sociedades occidentales o los estudios migratorios que se centran en los fundamentalismos judeocristianos, como muy acertadamente reflexiona Javier de Lucas (2021, 18), tiene "puntos de coincidencia entre la ideología reaccionaria neocon de Steve Bannon y algunos otros ideológicos de Trump, y la que manifiestan grupos populistas de extrema derecha en Europa, del Rassemblemnt National de Le Pen (antiguo Front National) a Alteernative für Deutshland (AfD) y Vox, pasando por la Lega Nord o Fratelli di Italia, Fidesz en Hungría o Prawo i Sprawiedliwosc (PiS) en Polonia". Incorporar una visión más globalizada sobre cómo estamos asistiendo a este giro autoritario a nivel mundial nos permite obtener claves con respecto a cómo pensar herramientas para la coexistencia entre poblaciones que profesen diversas religiones. Dichas herramientas serán un elemento no sólo necesario, sino imprescindible para poder diseñar políticas públicas que den respuestas desde una perspectiva comparada.

La mayoría de los estudios se enfocan en las implicaciones negativas y el auge de grupos inmigrantes bangladesíes en India, sin embargo, no analizan sobre la genealogía del uso de ciertos términos, como "infiltrados" referidos hacia la comunidad religiosa musulmana. La naturalización de estas retóricas está tan interiorizada, tan poco cuestionada, incluso en los momentos actuales, que no se debate, sino que se asume que son régimen de verdad y proclamas que instituye el gobierno. Tanto como lo son las políticas públicas diseñadas e implementadas a partir de estas ideas, cargadas de discriminación e islamofobia, pero justificadas en aras de mantener la seguridad frente al "otro", al identificado como el enemigo.

Las normativas y los discursos políticos son artefactos poderosos para la construcción de identidades jerárquicas que posibilitan los extrañamientos, los pensamientos que dan lugar a conductas de miedo, resentimiento y de institución del "otro" musulmán bangladesí como no merecedor siquiera de estar en el territorio que habita. Estos discursos políticos populista de la derecha sobre los extrañamientos de los bangladesíes musulmanes también influyen en el sentido común de la sociedad y la forma de referirse a ellos cuando se discursa la migración de procedencia bangladesí. Además, muchos trabajos académicos sobre la migración bangladesí siguen utilizando categorías como "ilegal", "infiltración", "irregular" o "indocumentado" y estos estudios también contribuyen e influyen en nuestro entendimiento de

quién es un inmigrante bangladesí. Perpetuando, de este modo, su exclusión social, al tiempo que justificando y reforzando lo recogido en las normas de forma indirecta. Es ineludible estudiar los casos que destacan la convivencia entre la comunidad hindú u otras comunidades religiosas y la comunidad musulmana inmigrante bangladesí para demostrar la diversidad existente entre varios grupos religiosos en la India, en contraste a lo que afirman los retóricos de los políticos conservadores y fortalecer los principios de la Constitución india que promueve respetar el secularismo. Por ejemplo, el 15 de diciembre de 2019, el barrio mayoritario musulmán de Shaheen Bagh en Delhi, empezó con una protesta pacífica sentada, liderada por las mujeres musulmanas principalmente, que manifestaron contra el nuevo reglamento de CAA y reivindicaron su revocación, así como parar la implementación de NRC. El movimiento empezó en un barrio apenas conocido; sin embargo, pronto empezó a atraer participantes de toda la India, de todas las religiones y la protesta se convirtió en un símbolo de la representación del pluralismo y el secularismo de la India (véase Imagen 4). Durante la protesta la gente preparaba *chai* y discursaba sobre la política, había periodistas famosos, activistas que daban charlas sobre la Constitución india, la CAA, los derechos de las personas indias y/o el secularismo (Faisal 2025a).

Además, había música, poesía, grafiti, las personas participantes y voluntariado suministraban medicamentos, mantas y comida entre las personas que se quedaban todo el día y la noche debajo de las carpas, en el frío. La manifestación que comenzó el 15 de junio de 2019 terminó en marzo de 2020 debido a la declaración de confinamiento en toda la India por la pandemia del COVID-19, y duró unos 100 días en total. Aunque el movimiento terminó, se convirtió en un hito significativo e inspiró otros movimientos similares en la India. Junto a demostrar la celebración y la posibilidad de la coexistencia de diversas identidades religiosas en espacios ordinarios, la protesta también nos recordó el feminismo interseccional donde las mujeres indias han asumido un papel fundamental en los movimientos sociales y políticos. En resumen, protestas así son claves fundamentales para pensar en cómo incluir las perspectivas de la diversidad en una democracia impura y la reivindicación de un pluralismo inclusivo de las organizaciones gubernamentales.

Estudios sobre la coexistencia en zonas como la de Shaheen Bagh también facilitarán comprender las implicaciones e influencias que pueden tener los discursos políticos hacia el público y las prácticas de exclusión en la sociedad actual hacia la población musulmana. A nivel legal, es imprescindible analizar la coherencia entre los discursos y el

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derecho escrito, por ejemplo, en el caso de CAA, el gobierno en los discursos orales justificó la necesidad de enmendarlo para proveer ciudadanía india a la población inmigrante que huyen de la persecución religiosa de los países vecinos de la India. Sin embargo, el derecho escrito no los menciona.

Imagen 4.

Protesta en Shaheen Bagh manifestando contra CAA, liderado por mujeres de Shaheen Bagh

Fuente: Elaboración propia, Nueva Delhi, 5 enero de 2020.

Por otro lado, la introducción del aspecto religioso en la legislación sobre migración de la CAA y el otorgar la nacionalidad según la identidad religiosa de una persona inmigrante y no mencionar la comunidad musulmana, hace que la ley no proporcione una oportunidad equitativa a toda esa población, realizando una marginalización sistemática y una exclusión institucional. La CAA viola derechos fundamentales recogidos en la Constitución india y no se alinea con la conducta internacional de incluir e integrar a las personas

inmigrantes musulmanes bangladesíes. Además, las disposiciones de la ley favorecen solo un tipo de persecución religiosa, agregando de forma activa e insistente el marco religioso de aceptar o rechazar a la población inmigrante. Es decir, hay una necesidad de examinar la CAA, enfatizando el rol de la religión en su modificación para no limitar a la comunidad musulmana en sus derechos. La enmienda debe incluir otras comunidades religiosas excluidas como las musulmanas de los países vecinos, las Rohingyas y Ahmadiyyas, buscando así lograr una integración y la compasión en consonancia con los valores primordiales del secularismo de la Constitución y de la práctica internacional. Mientras las políticas públicas que se diseñen e implementen en la India hacia la población inmigrante vengan definidas por la religión que se profese y no por la necesidad de dar protección y salvaguardar los derechos humanos de estos ciudadanos y ciudadanas, estas no permitirán la convivencia entre las distintas comunidades que conforman el país. El juego de las mayorías seguirá imponiéndose a esas minorías mediante el uso del miedo al extranjero, de las llamadas a no permitir lo diferente y, por tanto, a obviar la riqueza derivada de las diversidades culturales y la pluralidad religiosa.

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Expresiones públicas de religiosidad en el espacio urbano: gobernanza, patrimonio y diversidad religiosa. El caso de los *iftares* públicos

Public expressions of religiosity in urban space: governance, heritage, and religious diversity. The case of public *iftars*

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Sumario: Introducción. 1. Las expresiones públicas de religiosidad como fenómeno urbano específico. 2. Definición y conceptualización de las expresiones públicas de religiosidad. 2.1. Eventos religiosos urbanos, performatividad y orden de interacción. 2.2. Regímenes urbanos, patrimonialización y desigualdades de acceso al espacio público. 3. Dimensiones analíticas para el estudio de las expresiones públicas de religiosidad. 3.1. Inscripción espacial. 3.2. Gobernanza. 3.3. Representaciones sociales. 3.4. Sociabilidad, comida y recursos culturales. 4. El caso de los *iftares* públicos: un ritual islámico entre el evento urbano y el dispositivo de paz cotidiana. Conclusiones. Bibliografía.

Resumen: Este artículo analiza las expresiones públicas de religiosidad como un prisma para comprender las transformaciones urbanas de la diversidad religiosa. En contextos caracterizados por la coexistencia de secularización y pluralización religiosa, prácticas como procesiones,

meditaciones colectivas o festividades religiosas adquieren creciente visibilidad en calles y plazas. El texto propone entender estas expresiones como dispositivos urbanos híbridos situados en la intersección de distintos regímenes —patrimonial, regulatorio, relacional y devocional— que configuran las condiciones de visibilidad y legitimidad de las religiones en el espacio público. A partir de un marco analítico basado en cuatro dimensiones —inscripción espacial, gobernanza, representaciones sociales y recursos culturales (e.g., gastronomía o música)— se examina cómo estos eventos producen formas específicas de sociabilidad y jerarquización religiosa. Tomando el caso de los *iftares* públicos como ejemplo principal, el artículo muestra tanto su potencial para fomentar la interacción y el diálogo interreligioso como las desigualdades persistentes que estructuran el acceso al espacio urbano.

Palabras clave: Diversidad religiosa, espacio urbano, expresiones públicas de religiosidad, iftares públicos, Islam, gobernanza urbana, patrimonio.

Abstract: This article analyzes public expressions of religiosity as a lens through which to understand the urban transformations of religious diversity. In contexts characterized by the coexistence of secularization and religious pluralization, practices such as processions, collective meditations, and religious festivities are becoming increasingly visible in streets and urban squares. The article conceptualizes these expressions as hybrid urban devices situated at the intersection of different regimes —heritage, regulatory, relational, and devotional— that shape the conditions of visibility and legitimacy of religions in public space. Drawing on an analytical framework structured around four dimensions —spatial inscription, governance, social representations, and cultural resources (e.g., gastronomy or music)— the article examines how these events produce specific forms of sociability and religious hierarchization. Focusing on public *iftars* as the main empirical example, the article highlights both their potential to foster interaction and interreligious dialogue and the persistent inequalities that structure access to urban space.

Keywords: Religious diversity, urban space, public religious events, public iftars, Islam, urban governance, heritage.

Introducción[1]

En las últimas décadas, las ciudades europeas han experimentado una transformación profunda de su paisaje religioso (Bramadat et al. 2021; Becci et al. 2013). A la consolidación de sociedades ampliamente secularizadas se ha superpuesto un proceso sostenido de pluralización religiosa, impulsado por dinámicas migratorias, transformaciones culturales y reconfiguraciones internas de los propios campos religiosos (Garbin 2013; Vertovec 2019; Martikainen 2024). Este doble movimiento —secularización y diversificación— no ha conducido a una retirada de la religión del espacio público, sino, paradójicamente, a su reaparición bajo nuevas formas.

Uno de los ámbitos donde este fenómeno resulta más visible es el de las expresiones públicas de religiosidad que tienen lugar en calles, plazas y otros espacios urbanos abiertos. Se trata de prácticas colectivas que, en muchos casos, son efímeras, concentradas en un momento específico del calendario y altamente visibles, pero que producen efectos que trascienden ampliamente su duración temporal. Procesiones, festivales religiosos, celebraciones interreligiosas, meditaciones colectivas, oraciones públicas o *iftares* abiertos a la ciudadanía constituyen hoy un repertorio cada vez más habitual en ciudades europeas de distinto tamaño (Griera y Burchardt 2020).

Este artículo parte de la premisa de que estas expresiones públicas de religiosidad no pueden entenderse únicamente como manifestaciones de fe ni como simples eventos culturales. Más bien, funcionan como dispositivos urbanos híbridos que se sitúan en la intersección entre distintos regímenes de sentido y de regulación: el régimen patrimonial, que tiende a traducirlas en tradición, cultura o patrimonio intangible; el régimen de gobernanza, que las regula, autoriza y encuadra (Bader 2007); el régimen relacional, en el que se convierten en espacios de interacción social y diálogo interreligioso; y, en algunos casos, también, el régimen propiamente devocional.

El objetivo del artículo es doble. Por un lado, proponer un marco analítico que permita comprender el papel de estas expresiones públicas en la transformación contemporánea de la diversidad religiosa en Europa. Por otro, mostrar cómo ciertos elementos —la inscripción

[1] El artículo ha sido realizado en colaboración entre los dos autores. Mar Griera se ha centrado especialmente en la escritura general del artículo y del marco teórico. Víctor Albert-Blanco ha participado de una forma más activa en la escritura del caso de los iftares, en la redacción de la metodología y en la aportación de material empírico correspondiente.

espacial, la gobernanza, las representaciones sociales y los recursos culturales— resultan clave para analizar sus efectos y significados. La parte final del texto se centra específicamente en los *iftares* públicos, abordándolos como un caso paradigmático de estas dinámicas. Analizar estos eventos, y los *iftares* en particular, permite abordar la intersección del ejercicio de varios derechos y las tensiones que de ello se derivan. En este sentido, las expresiones públicas de religiosidad constituyen una concreción práctica del derecho a la libertad religiosa (Relaño 2025) inherente a los sistemas democráticos, pero cristalizan, a la vez, el llamado "derecho a la ciudad" teorizado por las humanidades y las ciencias sociales (Lefebvre 2017; Salguero y Hejazi 2021).

El artículo se basa en los datos obtenidos en diferentes proyectos de investigación llevados a cabo por los autores. La conceptualización teórica y las categorías analíticas que se detallan en las diferentes secciones derivan del proyecto "Expresiones religiosas en el espacio urbano de Madrid y Barcelona (EREU-MyB)"[2], liderado por Mar Griera, y que se realizó entre los años 2016 y 2019. El proyecto analizó los eventos públicos de cinco confesiones religiosas diferentes con una perspectiva comparada entre Madrid y Barcelona (Griera et al. 2021a). Por otra parte, el caso concreto de los *iftares* públicos se ha trabajado en un proyecto liderado por Víctor Albert-Blanco[3] entre 2023 y 2026, con el estudio de casos en Barcelona pero, también, en municipios situados en otras escalas territoriales como Vic, Melilla y Cabrils[4].

En ambos proyectos se siguió una aproximación cualitativa, con la observación repetida y sistemática de las celebraciones objeto de estudio. Concretamente, en el proyecto EREU-MYB se observaron más de cuarenta y cinco celebraciones religiosas en el espacio público de Madrid y Barcelona, mientras que en el marco del proyecto sobre *iftares* se asistió a una treintena de eventos entre 2023 y 2026. En los dos casos, las observaciones se apoyaron en un guion preestablecido, identificando y sistematizando los elementos más relevantes para su posterior análisis. Además, la mayoría de observaciones se realizaron por parte de más de un miembro de los

[2] "EREU-MYB. Religious Expressions in the Urban Space of Madrid and Barcelona", financiado por el Ministerio de Ciencia (referencia: cso2015–66198-P).

[3] "El iftar en las plazas. La celebración pública del ramadán en las ciudades medias españolas", financiado por la Fundación Pluralismo y Convivencia (FPyC) (referencia: PC-23-0026).

[4] "Menjar plegats. Els iftars públics com a dispositius de pau quotidiana", dirigido por Mar Griera y Víctor Albert-Blanco, y financiado por el Institut Català Internacional per la Pau (ICIP).

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respectivos equipos de investigación, lo que facilitó la multiplicidad de puntos de vista, la atención sobre distintos elementos (materiales, discursivos, de interacción, etc.) y el registro audiovisual de numerosos aspectos.

En los dos proyectos, la etnografía se completó con la realización de entrevistas semiestructuradas con actores religiosos, responsables de la administración pública y otros actores relevantes (asociaciones vecinales, policía, etc.). En el marco del EREU-MYB se realizaron un total de 76 entrevistas, mientras que para los *iftares* fueron 20. Asimismo, en ambos casos también se llevó a cabo la recogida y análisis de material documental, como artículos periodísticos, planes y reglamentos elaborados por la administración, o los anuncios y panfletos de los propios eventos religiosos. La complementariedad de estos métodos permitió la triangulación de los datos durante las fases de análisis e interpretación, así como la conceptualización conjunta que proponemos en el presente artículo.

1. **Las expresiones públicas de religiosidad como fenómeno urbano específico**

Las expresiones públicas de religiosidad constituyen un tipo particular de fenómeno religioso urbano (De la Torre y Semán 2021). A diferencia de los lugares de culto estables —templos, iglesias, mezquitas o centros espirituales— u otros marcadores espaciales perennes —imágenes, altares, cruces o monumentos—, estas prácticas se caracterizan por su carácter temporal y performativo. Irrumpen en el flujo cotidiano de la ciudad, transformando momentáneamente el significado y el uso de los espacios urbanos en los que se inscriben.

Estas expresiones presentan, al menos, cuatro rasgos distintivos. En primer lugar, son efímeras: su duración es limitada y su repetición suele estar ligada a calendarios religiosos, conmemoraciones específicas o iniciativas puntuales. En segundo lugar, son altamente visibles, ya que se desarrollan en espacios abiertos y accesibles, interpelando tanto a participantes como a audiencias no necesariamente implicadas religiosamente (Astor et al. 2025). En tercer lugar, son intensamente reguladas, pues requieren autorizaciones, coordinación con autoridades locales y cumplimiento de normativas diversas (Albert-Blanco y Martínez-Cuadros 2021). Finalmente, presentan un estatuto ambiguo: pueden ser leídas como religión, cultura, tradición, patrimonio, convivencia o incluso

espectáculo, dependiendo del contexto y de los actores implicados (Griera and Burchardt 2021).

Desde una perspectiva sociológica, estas expresiones pueden entenderse como eventos urbanos que ponen en tensión las fronteras entre lo religioso y lo secular, lo público y lo privado, lo cultural y lo político. No solo hacen visible la diversidad religiosa existente, sino que contribuyen activamente a producirla, al redefinir qué formas de religiosidad son legítimas, aceptables o deseables en el espacio público.

2. **Definición y conceptualización de las expresiones públicas de religiosidad**

2.1. *Eventos religiosos urbanos, performatividad y orden de interacción*

Las expresiones públicas de religiosidad pueden conceptualizarse como "eventos religiosos urbanos" (Bramadat et al. 2021), esto es, formas específicas de "eventización" de prácticas religiosas (Pfadenhauer 2010) que se despliegan en espacios urbanos abiertos y que reconfiguran, de manera intensificada y sensorial, los repertorios rituales ordinarios. La literatura sobre la *eventization of social life* (Getz 2007) y de las ciudades (Smith et al. 2022) ha mostrado cómo los eventos contemporáneos tienden a transformar prácticas y rutinas en experiencias públicas con altas densidades estéticas, emocionales y mediáticas (Salzbrunn 2004). En el caso religioso, esta transformación se produce a través de una coreografía de cuerpos, objetos, sonidos e imágenes que desplaza el ritual desde un marco congregacional hacia un marco urbano de audiencias múltiples.

Este desplazamiento es relevante por dos razones. En primer lugar, implica sacar la religión "fuera de las congregaciones" y situarla en espacios caracterizados por la copresencia entre extraños, la circulación acelerada y la concurrencia de usos y normatividades heterogéneas. En segundo lugar, obliga a considerar que lo religioso no se limita a la reproducción de identidades o doctrinas, sino que se produce en interacción con el espacio urbano (Knott 2015), sus infraestructuras, sus sensibilidades y sus jerarquías. En este sentido, los eventos religiosos urbanos constituyen laboratorios privilegiados para analizar cómo religión y ciudad se transforman conjuntamente (Saint-Blancat 2019).

Desde un punto de vista micro-sociológico, estos eventos pueden entenderse —siguiendo a Goffman— como "infracciones" del orden

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de interacción urbano: situaciones extraordinarias que alteran la regla de la inatención civil, suspenden temporalmente expectativas de anonimato y reconfiguran los marcos de interpretación de la copresencia. Al introducir corporalidades rituales, objetos devocionales, atmósferas sonoras y economías afectivas específicas, los eventos generan un régimen situacional que redistribuye la atención pública y hace visible el entramado normativo, moral y emocional que sostiene la vida urbana. Esta dimensión resulta clave para comprender por qué eventos formalmente comparables pueden suscitar respuestas públicas muy distintas: no solo activan debates sobre derechos o usos del espacio, sino también registros emocionales (comodidad/incomodidad, fascinación/amenaza, simpatía/sospecha) que estructuran la recepción pública de la diversidad religiosa.

En términos de teoría del ritual y de la performatividad, los eventos religiosos urbanos operan mediante una intensificación de la experiencia colectiva. Por un lado, movilizan dinámicas de liminalidad y *communitas* (Turner 1988), en la medida en que producen una temporalidad extraordinaria que interrumpe rutinas y abre un intervalo de recomposición simbólica. Por otro, funcionan como *performances* sociales (Alexander 2006) cuya eficacia depende de la articulación entre guiones rituales, recursos estéticos, credibilidad simbólica y relación con audiencias diversas. En los eventos urbanos, esa eficacia se juega tanto "hacia adentro" (cohesión y reflexividad comunitaria) como "hacia afuera" (legibilidad pública, reconocimiento, controversia), y se despliega en lo que podríamos llamar economías de intercambio de la atención social y del reconocimiento cultural.

De ahí que estos eventos no deban interpretarse como simples "ocupaciones" de la calle, sino como prácticas de *place-making* y, en ocasiones, de *place-taking* (Becci et al. 2017). Para las comunidades minoritarias, la *performance* pública contribuye a remapear simbólicamente la ciudad, a producir paisajes sagrados y a articular estrategias de *home-making* en contextos de movilidad y asentamiento (Kong 2005). Al mismo tiempo, los eventos pueden ser apropiados por actores mayoritarios (por ejemplo, iglesias históricas) como dispositivos de visibilidad y reposicionamiento en campos religiosos en declive, mostrando que la eventización no es un rasgo exclusivo de las minorías.

Ahora bien, la dimensión performativa no implica necesariamente confrontación (Astor et al. 2023). En muchos casos, los actores religiosos buscan producir visibilidades moduladas y socialmente aceptables, ajustando repertorios, estética y formatos de participación para maximizar su legibilidad pública. En este punto resulta central la

construcción de fronteras (a menudo disputadas) entre religión, cultura y patrimonio: el hecho de que un evento sea leído como religioso, cultural o patrimonial afecta de manera decisiva su recepción social y su gestión institucional. Esta ambivalencia explica por qué incluso expresiones "domesticadas" (Martínez-Ariño y Griera 2020) ponen en tensión las fronteras entre lo religioso y lo secular, al inscribir prácticas devocionales o semidevocionales en espacios definidos normativamente como no religiosos.

Finalmente, desde el punto de vista analítico, esta conceptualización desplaza el foco desde la sacralización estable del espacio hacia los procesos situados de producción de espacialidad religiosa que en otros contextos hemos caracterizado como "*doing religious space*" (Burchardt y Griera 2020). El espacio urbano no se transforma de manera duradera en espacio sagrado; más bien, es producido relacionalmente en el evento a través de interacciones, regulaciones y representaciones que confieren a la práctica una eficacia simbólica temporal pero socialmente significativa.

2.2. *Regímenes urbanos, patrimonialización y desigualdades de acceso al espacio público*

La segunda clave teórica para definir las expresiones públicas de religiosidad remite a su inserción en regímenes urbanos específicos (Griera y Burchardt 2020). Lejos de operar en un vacío normativo, estos eventos se desarrollan en contextos marcados por la superposición de regulaciones burocráticas, imaginarios de ciudad y órdenes emocionales que configuran de manera desigual el acceso al espacio público (Berg 2019).

El concepto de régimen urbano permite captar esta complejidad al articular tres dimensiones interdependientes: (a) los marcos legales y burocráticos que regulan el uso del espacio público; (b) el orden de interacción urbano y los registros emocionales asociados a determinadas presencias colectivas; y (c) los imaginarios dominantes sobre el espacio público y sobre los usuarios legítimos de la ciudad. La conjunción de estas dimensiones explica por qué, aun bajo regímenes formales aparentemente igualitarios, distintas confesiones experimentan condiciones de acceso profundamente asimétricas.

En este contexto, la patrimonialización de determinadas expresiones religiosas aparece como un mecanismo central de mediación. Como ya hemos mencionado, la traducción de prácticas religiosas al lenguaje del patrimonio, la cultura o la tradición permite reducir su potencial disruptivo y hacerlas compatibles con imaginarios

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de ciudad ordenada, cosmopolita y atractiva (Albert-Blanco 2019). Sin embargo, esta operación es selectiva y jerárquica: no todas las religiones ni todas las formas de religiosidad son igualmente patrimonializables (Weir y Wijnia 2023).

Las expresiones asociadas a tradiciones históricas mayoritarias o a espiritualidades percibidas como culturalmente 'atractivas' (ej. meditación budista) tienden a integrarse con mayor facilidad en estos regímenes, mientras que aquellas vinculadas a minorías racializadas —especialmente musulmanas— son objeto de una regulación más intensa y de mayores exigencias de adaptación (Griera y Burchardt 2020; Albert-Blanco y Martínez-Cuadros 2021). De este modo, la gobernanza de los eventos religiosos urbanos contribuye a reproducir desigualdades simbólicas y raciales bajo la apariencia de neutralidad administrativa (Griera 2025; Relaño 2025). En la ciudad de Barcelona, el trabajo de campo del proyecto de investigación sobre expresiones religiosas en el espacio público nos llevó a comparar las formas de gobernanza y regulación de una meditación budista (Griera y Clot-Garrell 2021), una procesión chiita, una procesión católica y una procesión sij, lo que permitió explorar con profundidad la cristalización de esta desigualdad y los matices que tomaba.

Las expresiones públicas de religiosidad deben entenderse, por tanto, como arenas relacionales en las que se negocian simultáneamente derechos, emociones, imaginarios y pertenencias urbanas. Su análisis permite visibilizar cómo la diversidad religiosa no solo se gestiona, sino que se produce activamente a través de prácticas situadas de regulación, patrimonialización y control de la interacción.

3. **Dimensiones analíticas para el estudio de las expresiones públicas de religiosidad**

Para comprender el papel de estas expresiones en la transformación de la diversidad religiosa urbana, es importante atender a cuatro dimensiones analíticas interrelacionadas: la inscripción espacial, la gobernanza, las representaciones sociales y la sociabilidad a través de la comida u otros recursos culturales.

3.1. *Inscripción espacial*

La inscripción espacial constituye una dimensión clave para analizar las expresiones públicas de religiosidad. La localización de los eventos

religiosos en la ciudad refleja relaciones de poder, grados de reconocimiento institucional y estrategias de visibilidad diferenciadas (García Bossio 2024). No todos los espacios urbanos son igualmente accesibles para todas las confesiones, ni todas las ubicaciones tienen el mismo valor simbólico. En Barcelona, por ejemplo, ha sido clave la disputa del espacio central de La Rambla, como espacio simbólico de reconocimiento (Aguirre 2025). La comunidad Sij de la ciudad, que cuenta con su *Gurdwara* en la calle Hospital —perpendicular a la Rambla— ha pedido reiteradamente poder circular por la Rambla en su procesión del Nagar Kirtan. Su petición ha sido negada en múltiples ocasiones y solo se ha aceptado que pudieran cruzar la Rambla a lo ancho, para traspasarla, pero no se ha autorizado que la procesión se desarrolle por el espacio central de la avenida, de forma vertical. Cuestión que, contrariamente, sí que se permite a la procesión católica de viernes santo, y que no ha sido puesta en cuestión, así como a otros eventos culturales de la ciudad vinculados a las Fiestas de la Mercè, entre otros.

El acceso a espacios centrales suele estar asociado a mayores niveles de legitimidad social y política, mientras que la relegación a espacios periféricos o menos visibles puede interpretarse como una forma de reconocimiento condicionado (Lang 2025). Sin embargo, no siempre es la centralidad del espacio urbano el principal elemento que guía la expresión religiosa, ya que en otras ocasiones son otras variables como la infraestructura urbana y natural del lugar (ej. playa o vegetación) la que determinan la inscripción espacial, o la lectura religiosa del espacio (ej. la predicación de algunos grupos evangélicos en lugares considerados de "pecado" y con la voluntad de evangelizar y redemir a la población) (Montañés 2024).

En definitiva, la inscripción espacial se convierte así en un indicador empírico de las jerarquías religiosas urbanas y de los regímenes urbanos que regulan la visibilidad de la diversidad.

3.2. *Gobernanza*

La gobernanza de las expresiones públicas de religiosidad combina marcos legales formales con prácticas informales y relacionales (Urrutia 2016; Martínez-Ariño 2018). Más allá de la legislación sobre libertad religiosa o uso del espacio público, la realización efectiva de estos eventos depende de interpretaciones administrativas, culturas organizativas locales y relaciones de confianza entre actores.

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La investigación empírica muestra que, aunque en teoría todas las confesiones están sujetas a las mismas normas en contextos democráticos y de libertad religiosa, en la práctica existen importantes asimetrías en los requisitos exigidos, en los controles aplicados y en la disposición institucional a facilitar estos eventos (Griera y Burchardt 2020). Estas diferencias remiten a procesos de racialización, a imaginarios dominantes sobre el espacio público y a concepciones implícitas sobre la religión legítima (Martínez-Ariño y Griera 2020, Frigerio y Lamborghini 2009).

3.3. *Representaciones sociales*

Las expresiones públicas de religiosidad están atravesadas por representaciones sociales diferenciadas que condicionan su recepción pública. Algunas prácticas son construidas como expresiones cosmopolitas y abiertas; otras son leídas como tradiciones culturales locales; y otras, en particular aquellas vinculadas al islam (Astor 2016), son frecuentemente problematizadas o asociadas a la alteridad (Planet 2018).

Estas representaciones no son estáticas. Son el resultado de un trabajo activo de encuadre llevado a cabo por las comunidades religiosas, las plataformas interreligiosas y las administraciones públicas. A través de estrategias discursivas y performativas, los actores buscan resignificar los eventos, enfatizando su dimensión cultural, inclusiva o de convivencia. En el caso de Barcelona es fundamental la labor realizada por la Oficina d'Afers Religiosos del Ayuntamiento, que trabaja colaborativamente con las comunidades en la creación de marcos patrimoniales que ofrecen lecturas culturales y convivenciales de este tipo de eventos. Resulta clave, también, la relevancia que adquieren las asociaciones interreligiosas al ejercer como *brokers* (mediadores) en este proceso de resignificación de los eventos religiosos en la esfera pública (véase *iftares* interreligiosos).

3.4. *Sociabilidad, comida y recursos culturales*

Los recursos culturales como la comida, música, estética y la corporalidad desempeñan un papel central en la mediación de las interacciones que se producen en las expresiones públicas de religiosidad. Lejos de ser elementos accesorios, constituyen dispositivos fundamentales para hacer la religión socialmente accesible y emocionalmente legible.

La comida compartida actúa como un potente mediador relacional (Clot-Garrell et al. 2022). Facilita la copresencia entre personas con trayectorias religiosas y culturales diversas, reduce la distancia simbólica y transforma eventos religiosos en experiencias de sociabilidad urbana. Al mismo tiempo, estos recursos contribuyen a presentar la religión en formatos considerados aceptables, moderados y compatibles con los imaginarios urbanos dominantes.

Las expresiones públicas de religiosidad ofrecen una ventana privilegiada para comprender la transformación contemporánea de la diversidad religiosa en Europa. Muestran cómo la gestión de la diversidad ya no se articula únicamente a través de marcos legales o institucionales, sino también mediante dispositivos simbólicos, performativos y relacionales.

Estos eventos crean oportunidades de reconocimiento y visibilidad, pero también generan nuevas formas de jerarquización. La diversidad religiosa es celebrada, pero bajo algunas condiciones: debe ser legible, moderada, estéticamente atractiva y compatible con los valores dominantes. Las expresiones que no se ajustan a estos criterios corren el riesgo de ser excluidas o problematizadas (Albert-Blanco 2019).

4. **El caso de los *iftares* públicos: un ritual islámico entre el evento urbano y el dispositivo de paz cotidiana**

Los *iftares* públicos constituyen un caso paradigmático para analizar las expresiones públicas de religiosidad en contextos urbanos europeos, ya que condensan de manera especialmente nítida las tensiones, ambivalencias y potencialidades que atraviesan la visibilidad pública del islam (Planet 2018). El *iftar* —el ritual que marca la ruptura diaria del ayuno durante el mes de Ramadán— es una práctica central del islam que articula las dimensiones espaciales, de gobernanza, de representaciones sociales y relacionales detalladas en el epígrafe anterior. Tradicionalmente celebrado en el ámbito familiar o comunitario, su desplazamiento al espacio público urbano supone una reconfiguración notable del ritual y de sus significados sociales, sobre todo en contextos diaspóricos (Garbin 2013).

En su forma pública, el *iftar* se transforma en un evento urbano híbrido que combina devoción religiosa, hospitalidad, sociabilidad y política urbana. Siguiendo la lógica de la eventización (Colombo et al. 2022), el ritual se reorganiza como una práctica performativa, abierta a audiencias diversas, y situada en espacios urbanos visibles. Esta transformación no implica necesariamente una pérdida de su dimensión

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religiosa, sino una reformulación de sus condiciones de inteligibilidad pública. La comida adquiere aquí un papel central como recurso de mediación cultural (Cuch 2025): actúa como lenguaje transversal que facilita la participación de personas no musulmanas, reduce la distancia simbólica y permite la emergencia de interacciones que difícilmente tendrían lugar fuera del marco ritual del evento. De manera significativa, los técnicos de interculturalidad de un distrito de Barcelona, implicados en la organización de un *iftar* público en la zona, nos explicaron, en el transcurso de una entrevista mantenida en abril de 2026, la importancia acordada a la comida en los siguientes términos:

> [Uno de los objetivos del *iftar*] era romper estereotipos, y bueno lo conseguimos a medias. Mostrar la diversidad del islam, ¿sabes? Sobre todo a través de la cocina, a parte de la *harira,* pues visibilizar otras comidas que fueran senegalesas, paquistaníes, etc. Y el otro objetivo era el de visibilizar qué es el Ramadán. (Técnico 1)
>
> Sí, informar sobre el Ramadán desde una perspectiva también cultural. Hicimos esto de los vestidos tradicionales, la biblioteca de libros…O sea que le dimos también este punto cultural de conocimiento y así. (Técnico 2)

Estos elementos son de una gran relevancia a la hora de analizar las apropiaciones espaciales de estas celebraciones. En este sentido, los *iftares* pueden tener lugar en espacios abiertos —como plazas, calles, o parques—, pero también pueden llevarse a cabo en equipamientos públicos u otros edificios. En Barcelona, por ejemplo, en los últimos años se han organizado *iftares* públicos en centros cívicos, patios de colegio, la sala de actos de un museo e, incluso, en un mercado municipal o en el centro LGTBIQ+ local. En Vic, una ciudad de 50.000 habitantes situada a 60 kilómetros de Barcelona, el *iftar* comunitario organizado anualmente por distintas asociaciones tiene lugar en el recinto ferial del municipio.

A nivel logístico y concreto, la delimitación y transformación temporal de estos espacios para acoger *iftares* se hace a través de los mismos dispositivos materiales que se usan en cualquier otro tipo de evento público. Sillas, mesas, vallas, tarimas, equipos de sonorización o papeleras contribuyen a conferir a estos *iftares* la dimensión de una festividad abierta, a la vez que acotada. Junto con la comida, estos elementos presentan una cierta resonancia y parecido con otro tipo de celebraciones, como las fiestas de barrio o las comidas populares (Clot-Garrell et al. 2022), lo que refuerza las condiciones de inteligibilidad pública mencionadas anteriormente.

La facilitación y disposición de estos elementos requiere un trabajo de organización significativo por parte de las comunidades musulmanas, pero también del resto de actores que se implican en estas celebraciones. El conjunto de estas acciones se enmarca en procesos más amplios de gobernanza de la diversidad religiosa y del islam en particular (Lems y Planet 2023). Las administraciones locales adquieren un papel protagonista en la regulación de los *iftares* ya que, a menudo, son las encargadas de asignar y autorizar la utilización de los espacios públicos requeridos, así como de facilitar los diferentes dispositivos logísticos y materiales mencionados. En algunas ocasiones, además, los ayuntamientos pueden llevar a cabo un trabajo de coordinación y puesta en común entre distintos actores sociales y religiosos. De esta forma, la gobernanza de los *iftares* deviene un proceso clave para su producción concreta, marcada por lógicas y relaciones de poder determinadas. En este sentido, durante las observaciones y entrevistas realizadas en el marco de los dos proyectos de investigación pudimos constatar la importancia de estas dinámicas. Así, en una ciudad mediana de Catalunya, los técnicos del área de Ciudadanía del Ayuntamiento nos expusieron de esta manera la implicación municipal en la producción de estas celebraciones:

> [Como Ayuntamiento] financiamos una parte, sobre todo el espacio, que como es municipal lo proveemos nosotros, y toda la parte de menaje, de mesas, sillas, platos, cubiertos, vasos, etc. Y ellos [las entidades] se ocupan de toda la parte de elaborar la comida, de proporcionarla. La parte de difusión también la gestionamos nosotros, pero ellos la hacen correr, las inscripciones y el trabajo que suponen, etc. Es un proyecto muy compartido, nosotros echamos más porque somos los profesionales que hay detrás y ellos son voluntarios, pero es muy compartido (Entrevista técnicos Ciudadanía Ayuntamiento, diciembre 2024).

La provisión de estos elementos puede verse afectada por las lógicas anteriormente mencionadas, pero también por la profusión de otro tipo de actividades (culturales, deportivas, etc.) y la gestión de determinados espacios públicos. En Barcelona, por ejemplo, el Ayuntamiento cede habitualmente todos estos elementos logísticos a las entidades y comunidades involucradas en estos eventos públicos, incluidos los religiosos y los *iftares*. Sin embargo, el año 2026, el *iftar* organizado por el Grupo interreligioso del Raval no pudo disponer de las vallas municipales para delimitar el espacio de la celebración en la Rambla del barrio. Según nos explicó una responsable del Grupo, el Ayuntamiento adujo que dos días después tendría lugar el Maratón de

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Barcelona, un evento deportivo que requería la movilización y disponibilidad de un gran número de vallas. De manera similar, el *iftar* celebrado en otro barrio fue objeto de un cambio de emplazamiento, ya que el espacio en el que tenía lugar hasta el año 2025 fue desconsiderado el 2026 por el Ayuntamiento y las asociaciones por la "mala reputación" de la plaza y los problemas que eso conllevaba para la gestión del evento. Como consecuencia, el *iftar* fue desplazado a otro lugar del barrio.

Más allá de estas cuestiones, la gobernanza urbana de la diversidad religiosa también puede traducirse en lo que Martínez-Ariño (2021) ha identificado como "recursos simbólicos". En los *iftares* públicos, esto implica la presencia de representantes de las administraciones públicas. Mientras que aquellos que ocupan responsabilidades técnicas, supervisan los diferentes elementos logísticos y el cumplimiento de las regulaciones, los responsables políticos aportan, con su presencia, un cierto apoyo y compromiso institucional con estas celebraciones. Además, en numerosas ocasiones, son invitados a tomar la palabra y dirigirse a las personas participantes. Estos discursos ensalzan la diversidad, la "interculturalidad" y recuerdan el principio de libertad religiosa, presentando los *iftares* como un ejemplo o buena práctica en la normalización y visibilidad urbana del islam.

Los discursos de estos representantes permiten concretar este apoyo institucional simbólico, proponiendo además una simbiosis con determinados "valores" que caracterizarían las ciudades. En Barcelona, por ejemplo, el alcalde asistió el año 2026 al *iftar* organizado por la Fundación Ibn Batuta, una asociación no religiosa de apoyo a la diáspora marroquí establecida en España. Durante su discurso, pronunciado unos minutos después de la ruptura del ayuno, ensalzó el evento, al que asistieron cerca de 1.000 personas, como "un momento especial para la ciudad", señalando que la "idea de compartir" propia de los *iftares* y del ramadán es también "muy de Barcelona". En los *iftares* que observamos el año 2025 en las ciudades Vic y Melilla, también pudimos constatar una narrativa similar. En la primera, el alcalde asistió al *iftar* comunitario organizado por las tres comunidades islámicas del municipio y otras entidades en el recinto ferial de la ciudad. Durante su discurso definió Vic como una ciudad "modelo" de interrelación comunitaria, señalando la comunidad musulmana como un ¨ejemplo de transmisión de los valores de la catalanidad¨. En Melilla, la delegada del gobierno central asistió al *iftar* organizado en un restaurante por la asociación Activas, una entidad de mujeres emprendedoras y profesionales. Cuando tomó la palabra, describió la ruptura del ayuno como un "momento de convivencia y respeto",

situándolo como un "ejemplo" de la ciudad y de su cultura, "no solo de una religión".

En algunos casos, y tal como han mostrado las investigaciones empíricas disponibles, los *iftares* públicos se insertan en dinámicas más amplias de transformación urbana, gentrificación y resignificación simbólica de barrios (Clot-Garrell et al. 2022; Albert-Blanco 2023; Salguero y Hejazi 2023). En estos contextos, la visibilización del islam a través de la comida y la estética ritual es simultáneamente celebrada como expresión de diversidad y objeto de una regulación intensa orientada a garantizar su adecuación a normas implícitas de orden, seguridad y neutralidad. En este sentido, el caso analizado del *iftar* en el espacio público barcelonés, nos ha mostrado que la localización, el formato organizativo y el grado de apertura del evento resultan elementos clave en su aceptación institucional y social, revelando la persistencia de jerarquías religiosas y raciales en el acceso al espacio público.

La cuestión de la gobernanza urbana de estas celebraciones entronca con las representaciones sociales que suscitan (Göle 2009). Si tanto sus organizadores como los actores institucionales que los apoyan articulan una narrativa alrededor de la diversidad y la interculturalidad, los discursos emitidos por otros actores sociales, mediáticos y políticos presentan una gran polisemia que va desde la aceptación activa al rechazo explícito, pasando por una cierta indiferencia o curiosidad. En este sentido, el auge de formaciones políticas de extrema derecha, como Vox o Aliança Catalana en el contexto español (Martínez-Cantó y Tudó-Cisquella 2025), ha conllevado la proliferación de controversias y señalamientos sobre estos eventos. Tanto en Vic como en Barcelona, por ejemplo, las redes sociales de las secciones locales de estos partidos han presentado los *iftares* públicos como ejemplos de una progresiva "islamización" del espacio público, traduciendo y concretando en espacios urbanos específicos una narrativa general de carácter civilizacionista y basada en el mito del "gran remplazo" (Brubaker 2017; Griera et al. 2021).

Desde el punto de vista del orden de interacción, los *iftares* públicos operan como *infractions* (infracciones) del espacio urbano. Suspenden temporalmente la inatención civil, introducen nuevas gramáticas de copresencia y reconfiguran los registros emocionales asociados a la presencia pública del Islam. Sin embargo, a diferencia de otros rituales islámicos más marcadamente corporales o sonoros (como los rezos colectivos o las procesiones chiitas de la *Ashura*) (Astor et al. 2025), el *iftar* se apoya en repertorios culturales ampliamente

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legitimados —la comida compartida, la hospitalidad, la convivialidad— que contribuyen a modular su potencial disruptivo y a hacerlo compatible con imaginarios urbanos dominantes.

La dimensión relacional de los *iftares* también conlleva la colaboración entre actores religiosos y no religiosos, así como la producción deseada de una cierta mezcla o mixicidad social, cultural y confesional. En el caso de Vic ya mencionado, los organizadores del *iftar* comunitario insisten en la necesidad de que en cada mesa se sienten personas musulmanas y no musulmanas con el objetivo declarado de promover la "interacción" y el "diálogo" entre los participantes. En Barcelona, el *iftar* promovido por el Grupo interreligioso del Raval constituye un ejemplo paradigmático de esta dinámica, ya que en su organización participan instituciones no religiosas como el Museo de Arte Contemporáneo, así como representantes de otras confesiones como la iglesia protestante o la parroquia del barrio.

En este marco, el proyecto "El iftar en las plazas"[5] emerge como un observatorio privilegiado para analizar la proliferación y diversificación de los *iftars* públicos en las ciudades españolas. Más allá de su dimensión empírica, el proyecto permite conceptualizar los *iftars* públicos como dispositivos de paz cotidiana, entendidos no como soluciones estructurales a los conflictos, sino como prácticas situadas que reconfiguran los marcos ordinarios de interacción. A través de la copresencia, la hospitalidad ritualizada y la producción de situaciones de reconocimiento mutuo, los *iftares* públicos generan espacios de encuentro que, aunque frágiles y contingentes, desafían dinámicas de polarización y estigmatización del islam.

Sin embargo, estos dispositivos no están exentos de ambigüedades. Su creciente institucionalización y resignificación convivencial puede implicar procesos de despolitización y domesticación de la diferencia religiosa, así como expectativas asimétricas sobre la capacidad de ciertas comunidades —en particular las musulmanas— para producir convivencia (Moreras 2024). En este sentido, los *iftares* públicos ilustran tanto el potencial como los límites de las expresiones públicas de religiosidad como herramientas de gestión de la diversidad religiosa en el espacio urbano contemporáneo.

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[5] Ver el proyecto: https://iftar.es/#home dirigido por Víctor Albert-Blanco, y que también está desarrollando una dimensión de análisis de la gobernanza urbana a través de un proyecto financiado por el ICIP y realizado por Alex Govers, Laura Cuch, Rosa Martínez-Ariño, Melania Brito y Mar Griera.

Conclusiones

Este artículo ha analizado las expresiones públicas de religiosidad como un prisma privilegiado para comprender las transformaciones contemporáneas de la diversidad religiosa en las ciudades europeas. Lejos de ser fenómenos marginales o meramente anecdóticos, estas expresiones constituyen hoy dispositivos urbanos centrales a través de los cuales se negocian la visibilidad, el reconocimiento, la pertenencia y la legitimidad religiosa en el espacio público.

El análisis desarrollado muestra que las expresiones públicas de religiosidad se sitúan en la intersección de múltiples regímenes —patrimonial, regulatorio, relacional y, en algunos casos, devocional— cuya superposición explica tanto su potencial integrador como sus efectos excluyentes. Su carácter efímero y performativo no debe interpretarse como falta de relevancia social, sino como una modalidad específica de producción urbana de lo religioso (Sinisalo 2026) que opera mediante la interrupción temporal del orden de interacción, la movilización de registros sensoriales y emocionales y la activación de audiencias múltiples (Astor et al. 2025).

Desde una perspectiva urbana, estas expresiones ponen de relieve el papel central de los regímenes urbanos en la gestión diferencial de la diversidad religiosa. Aun en contextos formales de igualdad jurídica, el acceso al espacio público aparece profundamente mediado por imaginarios de ciudad, procesos de patrimonialización selectiva y mecanismos de racialización implícitos. El análisis comparado de distintos eventos religiosos muestra que no todas las confesiones ni todas las formas de religiosidad acceden en igualdad de condiciones a la visibilidad pública (Saint-Blancat y Cancellieri 2014), y que la neutralidad administrativa convive con jerarquías simbólicas persistentes, lo cual pone en cuestión los derechos de libertad religiosa de la ciudadanía.

Asimismo, el artículo ha subrayado la importancia de atender a las dimensiones relacionales y culturales de estos eventos. Las expresiones públicas de religiosidad no solo comunican identidades confesionales, sino que producen situaciones de copresencia, sociabilidad y diálogo que reconfiguran —aunque sea de forma contingente y situada— las fronteras entre grupos religiosos, actores institucionales y ciudadanía. En este sentido, recursos como la comida, la estética o la música emergen como mediadores clave que hacen la religión socialmente legible y emocionalmente accesible, contribuyendo a modular su recepción pública.

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El análisis de los *iftars* públicos ha permitido ilustrar de manera especialmente clara estas dinámicas. Como ritual islámico desplazado al espacio urbano abierto, el *iftar* público condensa tensiones centrales del pluralismo religioso contemporáneo: entre devoción y convivialidad, entre visibilidad y regulación, entre reconocimiento y sospecha. Su progresiva institucionalización y resignificación como práctica de diálogo interreligioso y convivencia urbana revela tanto el potencial de estas expresiones como dispositivos de paz cotidiana como los límites estructurales que las atraviesan.

En conjunto, este artículo propone entender las expresiones públicas de religiosidad no solo como indicadores del pluralismo religioso, sino como prácticas activas de producción de diversidad y de configuración de lo urbano. A través de ellas, la diversidad religiosa no solo se gestiona, sino que se visibiliza, se jerarquiza y se reconfigura en el espacio urbano. Analizar estos eventos permite, por tanto, avanzar hacia una comprensión más fina de cómo las ciudades europeas están redefiniendo —de manera desigual, situada y conflictiva— los contornos de la convivencia religiosa y cómo se negocian los derechos de libertad religiosa en el contexto de sociedades crecientemente diversas.

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El tratamiento jurídico de la diversidad religiosa en la educación: la jurisprudencia del TEDH y su proyección en el Derecho español

The legal treatment of religious diversity in education: the jurisprudence of the ECHR and its projection in Spanish law

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Resumen: Este estudio aborda de forma integrada los fundamentos normativos e interpretativos que articulan la relación entre el derecho a la educación y la libertad de conciencia. Con tal fin, se examina el marco internacional, europeo y español en materia de libertad religiosa y educación, así como la jurisprudencia del Tribunal Europeo de Derechos Humanos, cuya doctrina exige que la instrucción pública se desarrolle desde la neutralidad, criticidad y pluralismo, excluyendo cualquier forma de adoctrinamiento estatal. La educación religiosa como hecho cultural y espacio de aprendizaje del pluralismo, capaz de integrar las distintas tradiciones presentes en la sociedad española sin renunciar a la neutralidad estatal ni al respeto debido a las convicciones de padres y alumnos. Sobre esta base, se analiza el modelo español de gestión de la diversidad religiosa y la adecuación de este a los

estándares de igualdad, no discriminación y pluralismo exigidos por el derecho internacional y europeo.

Palabras clave: Libertad religiosa, educación, diversidad, creencias, tolerancia.

Abstract: This study takes an integrated approach to the normative and interpretative foundations that shape the relationship between the right to education and freedom of conscience. To this end, it examines the international, European, and Spanish frameworks on religious freedom and education, as well as the case law of the European Court of Human Rights, whose doctrine requires that public education be developed from a position of neutrality, critical thinking, and pluralism, excluding any form of state indoctrination. Religious education is understood as a cultural phenomenon and as a space for learning about pluralism, capable of integrating the various traditions present in Spanish society without renouncing state neutrality or the respect owed to the convictions of parents and students. On this basis, the study analyzes the Spanish model for managing religious diversity and its conformity with the standards of equality, non-discrimination, and pluralism required by international and European law.

Keywords: Religious freedom, education, diversity, beliefs, tolerance.

Introducción

En las últimas décadas, las sociedades europeas en general han experimentado transformaciones profundas derivadas de intensos procesos de globalización, movilidad humana y circulación de ideas y estilos de vida. La creciente diversidad cultural, ética y religiosa que caracteriza este escenario ha modificado sustancialmente el panorama de creencias en el que se desarrollan las relaciones sociales y las políticas públicas. Este pluralismo emergente no ha sido ajeno al ámbito educativo, que se ha convertido en uno de los espacios donde de forma más visible se proyecta la convivencia entre diferentes tradiciones religiosas, filosóficas y morales.

En este contexto, el derecho a la educación adquiere especial relevancia como instrumento para promover la igualdad de oportunidades, para garantizar la cohesión social y para fomentar la tolerancia y el respeto a la diversidad, tal como establece entre otros, en la Declaración Universal de Derechos Humanos (en adelante, DUDH). La educación, entendida como un derecho humano fundamental, opera como presupuesto para el ejercicio de otras libertades básicas, incluyendo la libertad de expresión, el libre desarrollo de la personalidad y, especialmente, la libertad de pensamiento, de conciencia y de religión**.**

La relación entre estos derechos —libertad de conciencia y derecho a la educación— plantea retos específicos en las sociedades multiculturales actuales. La presencia de distintas confesiones, así como de convicciones no religiosas, exige articular un equilibrio entre la neutralidad estatal, la autonomía moral del alumnado, el derecho de los padres a orientar la educación de sus hijos conforme a sus convicciones y la obligación de los poderes públicos de garantizar entornos escolares inclusivos, libres de adoctrinamiento y respetuosos con la diversidad. En este terreno, la noción de libertad de conciencia se erige como un elemento esencial, pues protege tanto la adhesión a determinadas creencias como la opción de no profesar ninguna, y condiciona de modo directo la configuración de la enseñanza en materia religiosa. En palabras de Durkheim (2013), "tiene por objeto el suscitar y desarrollar en el niño un cierto número de estados físicos, intelectuales y morales que exigen de él tanto la sociedad política en su conjunto como el medio ambiente específico al que está especialmente destinado"; por ello, deberá ser tomada tanto desde la perspectiva individual como colectiva, ambas no excluyen, sino que permiten dimensionar la magnitud del derecho a la educación.

El sistema europeo de derechos humanos ha desempeñado un papel determinante en el diseño de estos equilibrios que inspiran esa interrelación. La jurisprudencia del Tribunal Europeo de Derechos Humanos (en adelante, TEDH) ha desarrollado principios esenciales para valorar la compatibilidad entre la presencia de contenidos religiosos en la escuela y la libertad de conciencia de padres y alumnos, clarificando los márgenes de apreciación estatal, los límites del adoctrinamiento, el alcance de la neutralidad y la imparcialidad del Estado —así como el derecho de los progenitores a que la educación respete sus convicciones filosóficas y religiosas—. Esta contribución jurisprudencial se ha convertido en un referente imprescindible para los Estados europeos a la hora de regular la educación religiosa y gestionar la diversidad en los sistemas escolares.

A la luz de este escenario, resultan necesarios análisis que aborden de manera integrada los fundamentos normativos e interpretativos que sustentan la relación entre educación y libertad de conciencia. El objetivo de este estudio es, precisamente, examinar el marco internacional, europeo y español en materia de libertad religiosa y derecho a la educación, recoger la jurisprudencia del TEDH que delimita la actuación de los Estados en el ámbito escolar y, finalmente, valorar el modelo español de gestión de la diversidad religiosa en la educación. A partir de este recorrido, se propone interpretar la educación religiosa como un hecho cultural y un espacio de aprendizaje del pluralismo, capaz de integrar las distintas tradiciones presentes en la sociedad española sin renunciar a la neutralidad del Estado ni al respeto debido a las convicciones de alumnos y familias.

1. **Marco internacional y europeo de la libertad religiosa en el ámbito educativo**

La libertad de pensamiento, de conciencia y de religión constituye uno de los pilares del sistema internacional de derechos humanos, tal como reconoce la DUDH (art. 18), desarrollada en otros instrumentos especializados. Desde esta perspectiva, la libertad religiosa se concibe como un derecho complejo, y que se manifiesta tanto en la esfera individual como colectiva mediante el culto, la práctica, la enseñanza y la observancia. La Organización de Naciones Unidas (en adelante, ONU) ha abordado de forma progresiva la relación entre libertad religiosa y derecho a la educación, orientando este hacia el pleno desarrollo de la persona y la promoción de la tolerancia, destacando la importancia del respeto a la diversidad cultural, étnica y religiosa (Souto 1999).

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Los Estados por su parte, deben garantizar la libertad de los padres para elegir la educación religiosa y moral de sus hijos, admitiendo la enseñanza de las religiones en la escuela pública siempre que sea objetiva, imparcial y respetuosa con la libertad de conciencia (Celador 2025). Así ha sido puesto de manifiesto por la Organización de las Naciones Unidas para la Educación, la Ciencia y la Cultura (en adelante, UNESCO), por medio de la Convención relativa a la lucha contra las Discriminaciones en la Esfera de la Enseñanza[1] y la Convención sobre los Derechos del Niño[2] (en adelante, CDN), subrayando la necesidad de que los sistemas educativos promuevan la comprensión intercultural y el bienestar espiritual y moral del alumnado (Souto 1999, 141). El art. 5 CDN, recoge aspectos esenciales: el derecho de los padres o tutores de organizar la vida dentro de la familia de conformidad con su religión o sus convicciones; el derecho del niño de acceso a la educación de acuerdo con los deseos de los padres y la prohibición consiguiente de ser instruido en religión o convicciones contrarias a aquello, el principio rector el interés superior del niño; y el desarrollo de la educación en un espíritu de comprensión, tolerancia, paz y hermandad universal.

Centrándonos en el contexto europeo, objeto principal de nuestro estudio, nos encontramos con el Convenio Europeo de Derechos Humanos[3] (en adelante, CEDH) nacido en 1950, donde quedaban fijadas por aquel entonces las líneas del reconocimiento de los derechos humanos en el entorno europeo. Además, el Convenio incluía un sistema de garantías judiciales para afianzar el ejercicio efectivo de los derechos recogidos en el texto, naciendo para ello, el TEDH, siendo su función principal velar por el cumplimiento del CEDH y sus protocolos adicionales.

Es el art. 9 CEDH el que establece el reconocimiento de la libertad de conciencia, de pensamiento y de religión, cuyo objetivo es garantizar el pluralismo religioso y la diversidad de actitudes morales, valores fundamentales en toda sociedad democrática.

En relación con la libertad de pensamiento, conciencia y religión, el TEDH afirma que "es uno de los fundamentos de una sociedad

[1] Conferencia General de la Organización de las Naciones Unidas para la Educación, la Ciencia y la Cultura, de 14 de diciembre de 1960. Véase: https://www.ohchr.org/es/instruments-mechanisms/instruments/convention-against-discrimination-education

[2] Resolución 44/25 de la Asamblea General de Naciones Unidas, de 20 de noviembre de 1989. Véase: https://www.ohchr.org/es/instruments-mechanisms/instruments/convention-rights-child

[3] Convenio para la Protección de los Derechos Humanos y de las Libertades Fundamentales, Roma, 4 de noviembre de 1950. Véase: https://www.echr.coe.int/documents/d/echr/convention_spa

democrática. (…) uno de los elementos más vitales que conforman la identidad de los creyentes y su concepción de la vida, pero es también un bien precioso para los ateos, los agnósticos, los escépticos y los indiferentes. El pluralismo inseparable en una sociedad democrática, que se ha conseguido a un alto precio a lo largo de los siglos, depende de ella "garantizando así, la diversidad ideológica como elemento estructural del orden constitucional europeo" (*Kokkinakis c. Grecia*[4], Serie A, n. 260-A, § 31). La función del Estado, según esta doctrina, no consiste en definir la ortodoxia religiosa, sino en asegurar condiciones para el pluralismo, de modo que cada individuo pueda formar y expresar libremente sus convicciones.

En cuanto al derecho a la educación no fue incorporado de forma expresa al CEDH. Fue el Protocolo n. 1[5] a dicho Convenio aprobado el 20 de marzo de 1952, el que incluyó entre otros nuevos derechos, el derecho a la educación (art.2). En el ámbito educativo, la dimensión externa de la libertad religiosa adquiere relevancia tanto para el alumnado (entre otros aspectos, el uso de símbolos, participación en actos religiosos, objeción de conciencia de padres y alumnos) como para el personal docente. Desde esta perspectiva, se combinan dos aspectos esenciales en su concepción, un derecho de prestación ("a nadie se le negará el derecho a la educación") con un deber estatal de respeto ("el Estado respetará el derecho de los padres a asegurar dicha educación conforme a sus convicciones religiosas y filosóficas").

En su redacción se asienta el necesario equilibrio entre los poderes públicos y la libertad de conciencia de los padres en la elección de la educación que quieren para sus hijos, armonizada con la propia finalidad legítima atribuida al Estado en materia educativa y la protección del interés del menor. A partir de la sentencia *Kjeldsen, Busk Madsen y Pedersen v. Dinamarca*[6], el Tribunal de Estrasburgo formuló el denominado "principio de objetividad", conforme al cual la educación estatal debe ser neutral, crítica y plural, excluyendo toda forma de adoctrinamiento (López-Sidro 2024, 176-177). Esta

[4] *Kokkinakis c. Grecia*, Sentencia 5095/71, de 25 de mayo de 1993. Véase: https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22kokkinakis%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-57827%22]}

[5] Véase: https://www.derechoshumanos.net/Convenio-Europeo-de-Derechos-Humanos-CEDH/1952-Protocolo01-ConvenioProteccionDerechosHumanosyLibertadesFundamentales.htm#a2

[6] *Kjeldsen, Busk Madsen y Pedersen v. Dinamarca*, Sentencia de 7 de diciembre de 1976, Serie A, n. 23, § 50. Véase: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-165144%22]}

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concepción ha sido ampliamente desarrollada por decisiones posteriores vinculada con la idea de pluralismo democrático como valor estructural que fundamenta la esencia y aplicación del Convenio Europeo.

2. **Artículos 16 y 27 CE: fundamentos constitucionales de la libertad religiosa y educativa**

La aprobación de la Constitución de 1978 trajo nuevos y amplios cambios tanto a nivel político como social. La Carta Magna nace a la par que el proclamado Estado social y democrático de Derecho, propugnando como valores superiores del ordenamiento jurídico, la libertad, la justicia, la igualdad y el pluralismo político (art.1.1). Situados en la sección 1ª del capítulo II del título I, dedicada a los derechos fundamentales, se reconocen, entre otros, la libertad religiosa, ideológica y de culto, así como el derecho a la educación.

El art. 16 establece "el reconocimiento de la libertad religiosa, ideológica y de culto, de los individuos y las comunidades sin más limitación, en sus manifestaciones que la necesaria para el mantenimiento del orden público protegido por la ley"; en ese mismo sentido, declara la neutralidad del Estado, el derecho a no declarar sobre la propia ideología o religión y la necesidad de que el Estado mantengan las relaciones de cooperación con la Iglesia Católica y con las demás confesiones. Con este reconocimiento "el Estado tiene en cuenta los valores de los distintos grupos religiosos e ideológicos existentes en la sociedad" (Navarro 1993). Comprobamos como en este caso, el legislador constitucional se ha alejado del literal de la redacción contenida en los diversos textos internacionales de derechos humanos que suelen mencionar la libertad de pensamiento, conciencia y religión.

Las libertades indicadas tienen en común un ámbito íntimo y personalísimo, ahora bien, todas tienen un objeto distinto en su contenido. La libertad religiosa tiene una trascendencia que requiere de la fe para su realización; la libertad de culto es parte esencial para su ejercicio a través de la práctica de actos de culto, ceremonias, ritos, etc. Por su parte, la libertad ideológica y de pensamiento representa la concepción que uno se forma de la realidad. Finalmente, la libertad de conciencia es la actuación de un sujeto para obrar conforme al dictamen de su propia conciencia (Combalía 2020, 70).

Su contenido cuenta con una doble dimensión; una negativa o interna y otra positiva o externa, "la libertad religiosa garantiza la

existencia de un claustro íntimo de creencias y, por tanto, un espacio de autodeterminación intelectual ante el fenómeno religioso, vinculado a la propia personalidad y dignidad individual (…) junto a esta dimensión interna, esa libertad incluye también una dimensión externa de *agere licere* que faculta a los ciudadanos para actuar con arreglo a sus propias convicciones y mantenerlas frente a terceros" (STC 19/1985, de 13 de febrero). En el mismo sentido, "el contenido del derecho a la libertad religiosa no se agota en la protección frente a injerencias externas de una esfera de libertad individual o colectiva que permite a los ciudadanos actuar con arreglo al credo que profesen (SSTC 19/1985, de 13 de febrero, 120/1990, de 27 de junio, y 63/1994, de 28 de febrero, entre otras), "se traduce en la posibilidad de ejercicio, inmune a toda coacción de los poderes públicos, de aquellas actividades que constituyen manifestaciones o expresiones del fenómeno religioso, asumido en este caso por el sujeto colectivo o comunidades" (STC 46/2001, de 15 de febrero, FJ4).

Su desarrollo en la Ley Orgánica 7/1980, de Libertad Religiosa, de 5 de julio[7] (en adelante LOLR) permite comprender entre otros, el derecho a cambiar de confesión, abandonar la que tenía, o no profesar ninguna, así como a manifestar libremente sus propias creencias religiosas o la ausencia de estas, o abstenerse de declarar sobre ellas (art. 2.1.a LOLR). Asimismo, comprende la práctica de los actos de culto, también la utilización en público de símbolos religiosos concretos; la asistencia religiosa de la propia confesión y la celebración de las festividades religiosas (art. 2.1.b LOLR). Igualmente recoge el derecho a recibir e impartir enseñanza e información religiosa, así como elegir para sí, y para los menores no emancipados e incapacitados, bajo su dependencia, dentro y fuera del ámbito escolar, la educación religiosa y moral que esté de acuerdo con sus propias convicciones (art 2.1.c LOLR).

En otro orden, la nueva situación nacida en 1978 conlleva el reconocimiento del derecho a la educación (art.27), un largo y complejo precepto que engloba el concreto ámbito del derecho a la educación que deberá ser desarrollado por parte de los poderes públicos (Vidal 2017). Reconoce el derecho a la educación y la libertad de enseñanza (art. 27.1), la libertad de creación de centros docentes (art.27.6), el derecho de los padres a participar en las decisiones sobre la educación de sus hijos, incluida la formación religiosa y moral

[7] BOE n. 177, de 24/07/1980. Véase: https://www.boe.es/buscar/act.php?id=BOE-A-1980-15955

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(art.27.3), todo ello con el trasfondo de concebir la educación para "el pleno desarrollo de la personalidad humana en el respeto a los principios democráticos de convivencia y a los derechos y libertades fundamentales" (art.27.2) (Sánchez Ferriz 1995).

La interpretación y alcance de estos derechos fundamentales, en congruencia con el contenido del art. 9.2 CE, recoge la obligación de los poderes públicos de adoptar medidas necesarias para garantizar la eficacia, protección y el pleno reconocimiento de aquéllos. Podríamos calificar esta actitud del Estado como una actividad prestacional o condición activa para posibilitar el ejercicio de estos derechos (Cotino 2012). El art. 16.3, tras formular la declaración de neutralidad (STC 340/1993, 16 de noviembre y 177/1996, de 11 de noviembre) ordena a los poderes públicos mantener "las consiguientes relaciones de cooperación con la Iglesia Católica y las demás confesiones" (STC 101/2004, de 2 de enero). Esta postura del TC introducirá la idea de laicidad positiva (Suarez Pertierra 2011) que, en su aspecto negativo, limita cualquier injerencia del Estado en temas religiosos y por otro, condiciona su actuación para favorecer el ejercicio de los derechos expuestos.

Si bien, de forma restrictiva, un sector doctrinal se permite afirmar que, "el art. 27CE ha abandonado las concepciones clásicas que incluyen la educación entre los temas asistenciales discrecionalmente asumidos por la Administración, para pasar a configurarla como una prestación constitucionalmente debida y directamente exigible" (Lorenzo 2001). "El derecho de todos a la educación incorpora una dimensión prestacional, en cuya virtud los poderes públicos habrán de procurar la efectividad de tal derecho y hacerlo (…) en las condiciones (…) del art. 27 de la CE" (STC 86/1985, de 10 de julio).

Los acuerdos de cooperación entre el Estado español y las confesiones religiosas se estructuran sobre la base del mencionado artículo 16.3 CE, y el art. 7.1 LOLR que prevé el criterio del "notorio arraigo"[8] como fundamento para la formalización de acuerdos de cooperación con el Estado. En este marco normativo se sitúan los Acuerdos entre el Estado español y la Santa Sede[9] de 1979, entre los cuales reviste especial relevancia, en materia educativa, el Acuerdo

[8] RD 593/2015, de 3 de julio, por el que se regula la declaración de notorio arraigo de las confesiones religiosas en España. BOE n. 183, de 1 de agosto de 2015. Véase: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-8642

[9] Firmados el 3 de enero de 1979. BOE n. 300, de 15 de enero de 1979. Véase: https://www.vatican.va/roman_curia/secretariat_state/archivio/documents/rc_seg-st_19790103_santa-sede-spagna_sp.html

sobre Enseñanza y Asuntos Culturales, que reconoce el derecho de los padres a que sus hijos reciban formación religiosa y moral conforme a sus convicciones, e incorpora la enseñanza de la religión católica en los niveles educativos no universitarios como parte del currículo obligatorio ofertado por los centros, si bien de carácter voluntario para el alumnado. De manera paralela, los Acuerdos de cooperación de 1992 suscritos con la Federación de Entidades Religiosas Evangélicas de España (Ley 24/1992[10]), la Federación de Comunidades Israelitas de España (Ley 25/1992[11]) y la Comisión Islámica de España (Ley 26/1992[12]) establecen igualmente la posibilidad de impartir enseñanza religiosa evangélica, judía o islámica en los centros docentes públicos y concertados, garantizando el respeto al derecho de elección de las familias y fijando las condiciones básicas de organización, contenidos y profesorado, en términos análogos a lo previsto para la enseñanza de la religión católica.

En su conjunto, este entramado normativo (Mantecón 2002) configura un sistema de cooperación que, combinada con la neutralidad estatal en el reconocimiento de la dimensión educativa de la libertad religiosa, dando lugar a un modelo plural y asimétrico en función de la implantación social, la historia y las necesidades jurídicas específicas de cada confesión. La interrelación entre la libertad religiosa y el derecho a la educación constituye uno de los ejes fundamentales del sistema constitucional español, en la medida en que ambos derechos —reconocidos respectivamente en los artículos 16 y 27 de la Constitución— garantizan tanto la autonomía de las convicciones individuales como la capacidad de las familias para orientar la formación moral y religiosa de sus hijos conforme a sus propias creencias (Souto 2011; Ruano 2014). Esta conexión se proyecta de manera directa en el marco jurídico que regula las relaciones entre el Estado y las confesiones religiosas y esencialmente, el objetivo que comparte con la libertad ideológica y religiosa, más aún en cuanto a la

[10] Ley 24/1992, de 10 de noviembre, por la que se aprueba el Acuerdo de Cooperación del Estado con la Federación de Entidades Evangélicas de España. BOE n. 272, de 12 de noviembre de 1992. Véase: https://www.boe.es/buscar/doc.php?id=BOE-A-1992-24854

[11] Ley 25/1992, de 10 de noviembre, por la que se aprueba el Acuerdo de Cooperación del Estado con la Federación de Comunidades Israelitas de España. BOE n. 272, de 12 de noviembre de 1992. Véase: https://www.boe.es/buscar/doc.php?id=BOE-A-1992-24854

[12] Ley 26/1992, de 10 de noviembre, por la que se aprueba el Acuerdo de Cooperación del Estado con la Comisión Islámica de España. BOE n. 272, de 12 de noviembre de 1992. Véase: https://www.boe.es/buscar/act.php?id=BOE-A-1992-24855

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libre formación de la personalidad (Llamazares 2011, 83; Rodríguez García 2012).

El derecho a la educación concebido como tal en el texto constitucional concede a los padres a la hora de decidir para sus hijos una formación religiosa y moral que esté de acuerdo con sus propias convicciones (art. 27.3). De este modo, su base jurídica se encuentra con la defensa de las posiciones religiosas minoritarias, cuando chocan con la concepción predominante en un sistema de enseñanza habituado todavía al mantenimiento curricular y simbólico de la confesión mayoritaria en la sociedad española (Ruiz-Rico 2011, 45). La propia Carta de Derechos Fundamentales de la UE[13], reconoce el derecho de todos a la educación, lo cual implica el acceso a una enseñanza obligatoria gratuita y también, aunque circunscrito a lo que establezca la ley nacional, el derecho de creación de centros docentes que, en todo caso, deben respetar los principios democráticos y el derecho de los padres a que se garantice la educación y la enseñanza de sus hijos conforme a sus convicciones religiosas, filosóficas y pedagógicas (Relaño 2004).

3. **Laicidad positiva y protección de minorías religiosas en el marco constitucional**

La construcción constitucional del hecho religioso en torno al principio de libertad religiosa supone un importante avance que conlleva una valoración positiva del factor religioso y la especial protección del ejercicio de los derechos inherentes, en este caso, el derecho a la educación, instrumentalizado a través de las garantías que establece un doble mandato a los poderes públicos de promoción de la libertad e igualdad y aseguramiento en el ejercicio de estos derechos fundamentales. De la misma manera, la libertad religiosa como principio constitucional debe ser tenido en cuenta junto con el resto de los principios que redundan en su regulación jurídica, entre otros, la neutralidad estatal respecto al hecho religioso y el principio de cooperación con las confesiones religiosas.

Debemos partir del elemento esencial, la neutralidad ideológica del Estado respecto del factor religioso que implica su indiferencia respecto a la libertad de conciencia e ideológica de los individuos, actuando eso

[13] Proclamada en Niza en diciembre de 2000 por el Parlamento Europeo, el Consejo de la Unión Europea y la Comisión. Véase: https://eur-lex.europa.eu/legal-content/ES/TXT/?uri=LEGISSUM:l33501

sí, como "cooperador necesario" para hacer efectivo el ejercicio de dichos derechos, puesto que la libertad religiosa y de conciencia de todos los individuos es una esfera para la libertad de actuación con arreglo a sus propias convicciones (STC 19/1985, de 13 de febrero). Así, "la neutralidad del Estado se caracteriza por exigir, tanto la igualdad de trato entre las confesiones, como la igualdad de trato entre lo religioso y lo no religioso, así como por ser una consecuencia obligada de la despersonalización del Estado" (Celador 2008, 92).

De la connivencia de los arts. 9.2 y 16.3 CE, el texto constitucional reconoce que los poderes públicos deben asumir un papel activo para garantizar que los derechos fundamentales puedan ejercerse plenamente. Esto implica crear condiciones que favorezcan la libertad y la igualdad reales en la vida social y eliminar aquellos obstáculos que limiten su efectividad. Dentro de esta función promocional se incluye también el deber de facilitar la participación de todas las personas en los distintos ámbitos de la convivencia colectiva.

En el marco religioso, este mandato constitucional se concreta en la obligación del Estado de tomar en consideración la diversidad de creencias existente en la sociedad española y de establecer con las confesiones religiosas unas relaciones basadas en la colaboración. De este modo, el principio de cooperación se convierte en una manifestación específica de la función asistencial y de promoción de los poderes públicos: no solo deben garantizar la libertad religiosa en sentido negativo (ausencia de injerencias), sino también favorecer las condiciones que permitan a las entidades religiosas desarrollar sus actividades en un marco de igualdad y respeto mutuo. Se exige a los poderes públicos una actitud positiva, desde una perspectiva "asistencial o prestacional" (FJ4, STC 46/2001, de 15 de febrero).

A la luz de lo planteado hasta aquí, podemos concebir la libertad de conciencia y el derecho a la educación como un binomio esencial para el pleno desarrollo de la persona. Desde esta perspectiva, surge un nuevo interrogante: ¿puede la educación religiosa —en sus distintas modalidades, ya sea confesional o pluriconfesional— contribuir a la integración y cohesión de las diversas culturas presentes en nuestras sociedades? La cuestión adquiere especial relevancia cuando nos referimos a las minorías religiosas y a cómo el sistema educativo aborda aspectos como el uso de simbología religiosa, la oferta de asignaturas vinculadas a determinadas confesiones o la garantía de entornos respetuosos con la diversidad de creencias (Celador 2024).

Históricamente, la protección de estas minorías ha evolucionado de forma significativa. Las primeras formulaciones de la Sociedad de Naciones fueron posteriormente ampliadas y matizadas por el Pacto

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Internacional de los Derechos Civiles y Políticos[14] de 1966, cuyo artículo 27 establece que "en los Estados en que existan minorías étnicas, religiosas o lingüísticas, no se negará a las personas que pertenezcan a dichas minorías el derecho que les corresponde, en común con los demás miembros del grupo, a tener su propia vida cultural, a profesar y practicar su propia religión y a emplear su propio idioma". Esta orientación culminó en 1992 con la aprobación de la "Declaración sobre los derechos de las personas pertenecientes a minorías nacionales o étnicas, religiosas o lingüísticas"[15], que obliga a los Estados a proteger la existencia y la identidad cultural, religiosa y lingüística de dichos grupos y a favorecer las condiciones necesarias para su promoción (art. 1).

Esta evolución normativa implica un giro relevante en la comprensión de la dimensión colectiva de la libertad religiosa. Al reconocerse la religión como un elemento fundamental de la identidad cultural de los grupos, su protección se enmarca en el multiculturalismo y en la búsqueda de una convivencia plural entre identidades diversas (Suárez Pertierra 2005). De este modo, la libertad religiosa —incluida su manifestación en el ámbito educativo— debe garantizarse especialmente allí donde existan minorías susceptibles de quedar en desventaja jurídica, social o cultural[16] (Capotorti 1991).

4. **Neutralidad, cooperación y diversidad religiosa en el marco educativo español**

Dentro del sistema educativo español coexisten tres tipos de centros —públicos, privados y concertados— (Llamazares 2011, 57) cuya configuración responde a la estructura constitucional derivada del artículo 27 CE, que reconoce la libertad de enseñanza (art. 27.1), el derecho de los padres a que sus hijos reciban la formación religiosa y moral conforme a sus convicciones (art. 27.3), y la libertad de creación de centros docentes dentro del respeto a los principios constitucionales (art. 27.6). La existencia de esta triple red es expresión institucional del

[14] Resolución 2200 A (XXI) de la Asamblea General de Naciones Unidas, 16 de diciembre de 1966. Véase: https://www.ohchr.org/es/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

[15] Resolución 47/135 de la Asamblea General de Naciones Unidas, de 18 de diciembre de 1992. Véase: https://www.ohchr.org/es/instruments-mechanisms/instruments/declaration-rights-persons-belonging-national-or-ethnic

[16] Véase: https://searchlibrary.ohchr.org/record/14895/

pluralismo ideológico y religioso característico del Estado social y democrático de Derecho (STC 5/1981; STC 77/1985).

A ello se suma el artículo 16.3 CE, que impone a los poderes públicos un deber de cooperación con las confesiones religiosas y excluye tanto la confesionalidad estatal como la hostilidad hacia el hecho religioso. Esta fórmula, como hemos manifestado en páginas anteriores, define un modelo de laicidad cooperativa en el que la neutralidad estatal se configura como una neutralidad activa, inclusiva y equilibrada (STC 46/2001; STC 128/2001). Dicha neutralidad exige evitar cualquier forma de adoctrinamiento (STC 26/2024), pero también permite —y, en ciertos supuestos, exige— la promoción del ejercicio efectivo de la libertad religiosa en condiciones de igualdad (Motilla 2017).

En este contexto normativo, la Iglesia católica ha mantenido históricamente una posición predominante en la configuración de la enseñanza religiosa, tanto por motivos sociológicos como por su arraigo jurídico derivado de los Acuerdos con la Santa Sede de 1979, cuya constitucionalidad ha sido reiteradamente confirmada por el TC (STC 38/2007, FJ 6). La enseñanza religiosa católica, impartida como asignatura específica en centros públicos y concertados, continúa siendo el modelo mayoritario.

Sin embargo, el pluralismo religioso propio de la sociedad española —acentuado por la inmigración y el dinamismo social contemporáneo— ha puesto de manifiesto la necesidad de garantizar el derecho de igualdad y no discriminación de las confesiones minoritarias. Aunque las comunidades islámicas, judías y evangélicas cuentan con Acuerdos de Cooperación (Leyes 24/1992, 25/1992 y 26/1992), el desarrollo efectivo de la enseñanza religiosa de estas confesiones es claramente deficitario (López de Goicoechea 2025). Se ha evidenciado la distancia que separa el reconocimiento *de iure* del disfrute *de facto* de este derecho, especialmente por la falta de profesorado, la desigual implantación territorial y la ausencia de mecanismos administrativos de coordinación.

Estas carencias generan tensiones con principios constitucionales como el derecho a la igualdad (art. 14 CE) y la obligación estatal de garantizar el ejercicio efectivo del derecho a la libertad religiosa (art. 16 CE) sin que la posición histórica mayoritaria de una confesión pueda traducirse en privilegios injustificados. El TC ha subrayado reiteradamente que el Estado debe adoptar medidas para hacer compatibles la neutralidad y la cooperación con la realización práctica de los derechos fundamentales en juego (STC 128/1991; STC 101/2004).

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Desde la perspectiva social y constitucional, la educación desempeña un papel esencial en la construcción del pluralismo religioso democrático, en línea con lo establecido en el artículo 13 del PIDESC, el artículo 18 del PIDCP, y la doctrina del Tribunal Europeo de Derechos Humanos sobre el artículo 2 del Protocolo Adicional n. 1 al CEDH. Según la jurisprudencia del TEDH (casos *Kjeldsen, Busk Madsen and Pedersen c. Dinamarca*; *Folgerø c. Noruega*[17]; *Zengin c. Turquía*[18]), el Estado debe garantizar que la educación pública respete las convicciones religiosas y filosóficas de los padres, evitando el adoctrinamiento y asegurando la neutralidad e imparcialidad del currículo.

En este marco europeo, ha adquirido especial relevancia la iniciativa española en la OSCE que dio lugar a los "Principios Orientadores de Toledo"[19] (2007), nacidos para encauzar la enseñanza sobre religiones y creencias en una perspectiva de derechos humanos. Los Principios destacan dos ideas esenciales. Por un lado, la necesidad de fomentar una enseñanza no confesional, objetiva y neutral, que fortalezca la libertad de conciencia y el respeto al pluralismo y, por otro, la capacidad de la educación religiosa no confesional para combatir estereotipos, prejuicios y formas de intolerancia en sociedades multiculturales.

La doctrina ha señalado que una adecuada educación sobre el hecho religioso contribuye al desarrollo integral de la persona, fortalece la ciudadanía democrática y facilita la convivencia en sociedades diversas. Se manifiesta la importancia del papel que puede jugar la educación religiosa para conseguir el desarrollo integral de la persona, y examinar si esta clase de educación puede contribuir a fomentar la tolerancia y la no discriminación (Rossell 2002). Esta perspectiva de estudio nos muestra una relación entre la diversidad y tolerancia, en dónde el arma adecuada para combatir la intolerancia es la educación (Briones 2019).

Desde esta perspectiva, la educación religiosa entendida como hecho cultural y no dogmático debe basarse en el estudio objetivo, académico y comparado de las religiones, sin restringirse a una confesión particular (Díez de Velasco 1999). La necesidad de cumplir los mandatos de neutralidad y pluralismo exige diseñar una asignatura

[17] Sentencia *Folgerø c. Noruega*, de 29 de junio de 2007, n, 15472/02. Véase: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-139372%22]}

[18] Sentencia *Zengin c. Turquía*, de 9 de octubre de 2007, n. 1448/04. Véase: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-82580%22]}

[19] Véase: https://www.osce.org/es/odihr/29155

específica sobre el hecho religioso que reúna tres requisitos jurídicos esenciales: a) respeto estricto de la libertad de conciencia (art. 16 CE y art. 18 PIDCP); b) ausencia total de adoctrinamiento, de acuerdo con la jurisprudencia del TEDH y del TC; c) garantía de igualdad y no discriminación para todas las confesiones presentes en España. Se pone de relieve el valor del estudio de fenómenos políticos y sociales, como la religión (Suárez Pertierra 2004), desde diversas perspectivas, y en ningún caso confesionales, con el fin de favorecer la comprensión de una realidad cultural diferente (Fernández-Coronado 2005, 235). Solo una asignatura estructurada de este modo puede satisfacer los mandatos constitucionales y europeos y, al mismo tiempo, contribuir a la formación de ciudadanos capaces de comprender y valorar la diversidad religiosa, pues en la dimensión personal del derecho a la educación, para cubrir la dimensión interna y externa de la libertad ideológica y religiosa, no solo debe aportar conocimientos, sino también valores de convivencia democrática (Pelayo 2013, 292).

5. La jurisprudencia del TEDH ante los desafíos del pluralismo religioso en las aulas

La creciente diversidad cultural en Europa ha dado lugar a la incorporación de nuevas expresiones y valores religiosos en la vida social, fenómeno que plantea importantes retos para los sistemas educativos. Ante esta realidad compleja y plural, resulta necesario que la educación refleje adecuadamente esta pluralidad, en consonancia con las obligaciones que los Estados han asumido en el marco del Derecho internacional.

En este sentido, las políticas públicas deben orientarse a garantizar que la enseñanza incluya una aproximación amplia y contextualizada a las distintas religiones, prestando especial atención a aquellas que adquieren mayor presencia en cada entorno escolar concreto. La coexistencia de diversas creencias en el ámbito escolar exige la adopción de prácticas que reflejen y promuevan el respeto hacia todas las confesiones. La escuela, en este contexto, se convierte en un espacio privilegiado para el aprendizaje de la convivencia plural y el reconocimiento de las diferencias religiosas como parte de la riqueza cultural compartida.

Las situaciones problemáticas en el ámbito educativo surgen, en ocasiones, por la ausencia de una atención especializada que facilite la integración de las minorías religiosas mediante fórmulas prestacionales adecuadas a sus características culturales y confesionales. En otras

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circunstancias, los conflictos derivan del mantenimiento en los centros escolares de simbología religiosa (Llamazares 2018) asociada a una confesión mayoritaria aún predominante en el entorno social —como la presencia del crucifijo—, o bien de la prohibición de determinadas manifestaciones individuales de la libertad religiosa por parte de miembros de confesiones minoritarias, entre ellas el uso del velo islámico (Gómez Sánchez 2012). También pueden generarse tensiones a causa de actitudes de intolerancia frente a materias consideradas "sensibles" en el currículo, o por intentos de algunos progenitores de intervenir de forma decisiva en los contenidos educativos, ya sea rechazando la enseñanza de determinados valores o impidiendo la participación de sus hijas en asignaturas como educación física, por considerarlas contrarias, en su opinión, al recato femenino prescrito por preceptos religiosos.

En este contexto, el TEDH ha procurado, por lo general, armonizar los principios de pluralismo religioso y de la autodeterminación personal, al tiempo que subraya la responsabilidad del Estado de garantizar un derecho a la educación libre de toda forma de discriminación por motivos ideológicos, culturales o religiosos. No obstante, tal equilibrio requiere frecuentemente delimitar con precisión la frontera entre las libertades individuales y las obligaciones públicas, cuya interacción se ve particularmente expuesta al conflicto debido a la diversidad religiosa y multicultural presente en las sociedades contemporáneas. La estrategia jurisprudencial del TEDH sitúa en el eje de la resolución de estos problemas la noción de neutralidad ideológica, erigida como criterio rector que debe orientar tanto la enseñanza de las materias curriculares como las conductas individuales en el ámbito escolar.

Pasemos pues, a analizar posibles escenarios de conflicto desde la posición del TEDH.

La jurisprudencia del TEDH ha desempeñado un papel decisivo en la delimitación del contenido y alcance del derecho a la educación (art. 2 del Protocolo n. 1 del CEDH) y de la libertad de pensamiento, conciencia y religión (art. 9 CEDH) en el ámbito escolar (Canosa y Cano 2023). A través de sus pronunciamientos, el Tribunal ha configurado un estándar interpretativo que descansa sobre tres pilares: la exigencia de neutralidad ideológica del Estado**,** la prohibición de adoctrinamiento y la garantía de un entorno educativo respetuoso con la diversidad religiosa y filosófica, especialmente y como hemos advertido anteriormente, en contextos multiculturales. Ahora bien, podemos también indicar que no vamos a encontrar respuestas uniformes sobre las libertades aquí estudiadas. Las divergencias se encuentran a la hora

de delimitar el contenido de un mismo derecho fundamental en circunstancias socioculturales con tradiciones distintas o antagónicas en materia religiosa. En este sentido, uno de los aspectos que ha generado mayor repercusión tanto en el Tribunal como en las sociedades occidentales es el uso del velo islámico (Relaño 2006), especialmente en los espacios públicos y en el ámbito escolar.

La participación de alumnas musulmanas en la clase de educación física ha sido el núcleo central examinado por el TEDH en los asuntos *Dogru c. Francia*[20] y *Kervanci c. Francia*[21], en donde se avalaba la prohibición del uso del pañuelo islámico durante las clases de educación física, atendiendo a razones de seguridad, disciplina escolar y cumplimiento del reglamento interno. Por su parte, en *Osmanoğlu y Kocabaş c. Suiza*[22], el Tribunal confirmaba la legitimidad de exigir a las alumnas de origen musulmán la participación en clases mixtas de natación, al considerar que la preservación de la integración social y la educación en igualdad constituyen objetivos legítimos que permiten modular las exigencias derivadas de la libertad religiosa, especialmente cuando el Estado ofrece medidas atenuadoras (como vestimenta apropiada o espacios diferenciados para el aseo). En ambos fallos, confirmaron la legitimidad de prohibir el pañuelo islámico en clases de educación física. El Tribunal entendió que la medida respondía a motivos de seguridad, de respeto de las normas internas y de mantenimiento de la disciplina escolar, lo que constituye un fin legítimo y proporcional.

En la Sentencia de *Leyla Şahin c. Turquía*[23], desde nuestro punto de vista, desacertadamente, el TEDH admite la prohibición del velo islámico en instituciones universitarias turcas en virtud del principio de laicidad, otorgando un amplio margen de apreciación a los Estados para preservar el orden académico y la igualdad de género. En este contexto, la limitación quedaba alejada de la proporcionalidad limitativa de derechos, pues únicamente las restricciones en el uso de símbolos y vestimentas religiosos estaba asociada a la religión musulmana y en concreto, al *hiyab*, el velo islámico y la barba

[20] Sentencia *Dogru c. Francia,* de 4 de diciembre de 2008, n. 27058/05. Véase: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-90039%22]}

[21] Tribunal Europeo de Derechos Humanos (Sección 5ª). Sentencia *Kervanci c. Francia*, de 4 de diciembre de 2008 (TEDH\2008\98). Véase: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-90047%22]}

[22] Sentencia *Osmanoğlu y Kocabaş c. Suiza,* de 10 enero de 2017, n. 29086/12. Véase: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-170436%22]}

[23] Sentencia *Leyla Şahin c. Turquía* (Gran Sala), de 10 de noviembre de 2005, (GC), n. 44774/98. Véase: https://hudoc.echr.coe.int/eng#{%22appno%22:[%2244774/98%22]}

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"religiosa" de los varones. El gobierno turco justificó la medida prohibitiva como parte de la garantía de la laicidad, la igualdad de género y el orden público dentro del campus. En *Mikyas y otros c. Bélgica*[24] el propio Tribunal respaldó la prohibición del uso de símbolos religiosos visibles (incluido el hiyab) en las escuelas públicas de la comunidad flamenca de Bélgica. La clave del fallo reside en que la medida no busca atacar una fe específica, sino preservar un entorno educativo neutro. En este caso, los puntos clave del fallo son la consecución de la neutralidad inclusiva, en orden a proteger a los alumnos de presiones externas y facilitar la convivencia entre distintas creencias. La proporcionalidad en la medida, en este caso, se determinó la prohibición como medida equilibrada para salvaguardar los valores democráticos. Finalmente, se garantiza la no discriminación de la medida adoptada puesto que se prohíbe cualquier símbolo religioso o ideológico con carácter general. En este sentido, como estima el Tribunal, el Estado tiene el derecho a imponer una "neutralidad visual" para garantizar la igualdad en las aulas.

En cualquier caso, nos encontramos con un contexto muy diferente en *Dahlab c. Suiza*[25]. Aquí, una profesora, de religión musulmana, deseaba portar el velo islámico en las clases. Aquí, el Tribunal declaró razonable que la docente fuera impedida en el uso del velo islámico al impartir clase a niños de corta edad. Se consideró que el Estado puede valorar el posible efecto proselitista que la vestimenta religiosa podría ejercer sobre un alumnado de edad temprana, otorgando prioridad a la protección de su formación y madurez y reconocimiento de la neutralidad de los espacios escolares públicos.

Un aspecto generalizado en las distintas sentencias analizadas deviene a la hora de entender que en materia de educación, enseñanza y símbolos religiosos los Estados tienen un amplio margen de apreciación, dada la diversidad cultural, histórica y religiosa de los países europeos. En este particular, podrán decidir cómo organizar el sistema educativo para proteger el pluralismo dentro de las aulas. Ahora bien, el TEDH recuerda que los Estados están obligados a garantizar un marco educativo que no imponga a los alumnos una orientación religiosa específica, debiendo evitar situaciones en las que la simbología dominante llegue a comprometer el pluralismo y la igualdad. De este modo, el fallo recuerda que el artículo 2 del

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[24] Sentencia *Mikyas y otros c. Bélgica,* de 9 de abril de 2024, n. 50681/20. Véase: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22002-14325%22]}

[25] *Dahlab c. Suiza*. Decisión de 15 de febrero de 2001 (n. 42393/1998, TEDH 2001-V). Véase: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-22643%22]}

Protocolo N. 1 (derecho a la educación) y el artículo 9 (libertad de pensamiento, conciencia y religión) del CEDH establecen un marco en el que el Estado, al organizar la enseñanza pública, debe respetar las convicciones religiosas o filosóficas de los padres y de los alumnos, garantizando un entorno educativo abierto, crítico, pluralista, y libre de adoctrinamiento. Además, se recalca que los Estados no tienen que eliminar todos los símbolos religiosos, sino que deben garantizar que la enseñanza sea neutral —es decir, que no favorezca una religión sobre otra ni imponga creencias a los alumnos— y debe evitar que una simbología dominante comprometa la igualdad o el pluralismo.

Otro de los contextos encontrados es el referido a la enseñanza religiosa, currículo y derecho de los padres a elegir la educación religiosa de sus hijos. Aquí, la doctrina del TEDH en materia educativa se ha construido de forma progresiva a partir de una serie de decisiones que delimitan las obligaciones del Estado respecto de la libertad de conciencia, la neutralidad religiosa y el derecho de los padres a que la instrucción de sus hijos se desarrolle conforme a sus convicciones filosóficas y religiosas, especialmente cuando la educación aborda materias de contenido religioso, moral o sexual**.**

A través de los distintos fallos podemos encontrar un conjunto coherente de principios rectores en este ámbito.

Inicialmente, en la Sentencia *Kjeldsen, Busk Madsen y Pedersen c. Dinamarca* (1976) a la hora de examinar la forma en la que comenzó a ser impartida una materia de educación sexual en la escuela pública, el TEDH establece que la actuación educativa estatal debe conducirse con arreglo a los principios de objetividad, crítica y pluralismo, excluyendo cualquier forma de adoctrinamiento directo o indirecto cuando estamos en presencia de materias de contenido moral, religioso e ideológico. La razón esgrimida se encuentra en la posible afectación de manera directa del ámbito moral y las propias convicciones de los padres y alumnos. El Tribunal reconoce al Estado un amplio margen para impartir educación en materias sensibles, incluida la sexual, siempre que ésta cumpla los requisitos de neutralidad y no imposición, y no pretenda moldear de manera dogmática las convicciones del alumnado.

Décadas más tarde, la posición del tribunal permanece invariable ante este tipo de materias. En *Dojan y otros c. Alemania*, varias familias cristianas evangélicas recurrieron al Tribunal Europeo de Derechos Humanos tras ser multadas por negarse a que sus hijos asistieran a clases de educación sexual, a un proyecto teatral sobre prevención de abusos y a celebraciones de carnaval, alegando que estas actividades interferían con sus creencias. El Tribunal destacó la función esencial de

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la escuela pública como motor de integración social. Argumentó que permitir que los niños sean eximidos de ciertas materias por motivos religiosos dificultaría su interacción con personas de diferentes orígenes y creencias, algo fundamental para la convivencia. En definitiva, la sentencia establece que la obligatoriedad escolar y la transmisión de conocimientos generales prevalecen sobre el deseo de los padres de aislar a sus hijos de contenidos que contradigan su fe, siempre que dichos contenidos se traten con neutralidad pedagógica.

Por su parte, cuando estamos en presencia de materias de corte religioso el TEDH también delimita la forma en la que se debe interpretar su implantación dentro del currículo escolar. La asignatura objeto de análisis era KRL ("Cristianismo, Religión y Filosofía"), de carácter obligatorio en las escuelas noruegas, fue objeto de la Sentencia *Folgerø y otros c. Noruega* (2007), el Tribunal declara vulnerado el art. 2 del Protocolo n. 1 al constatar que la asignatura obligatoria de "cristianismo, religión y filosofía" no garantizaba un equilibrio adecuado entre el peso del cristianismo y el tratamiento de otras confesiones, ni ofrecía un régimen de exención compatible con el derecho de los padres a asegurar una educación conforme a sus convicciones. Aquí el Tribunal analiza una materia religiosa del currículo, no optativa, con un claro componente confesional predominante (Relaño 2006).

En la misma línea, *Hasan y Eylem Zengin c. Turquía* (2007) y *Mansur Yalçın y otros c. Turquía*[26], establecían la enseñanza islámica obligatoria (la rama del islam sunní), subrayan que un currículo confesional impuesto sin mecanismos efectivos de exención vulnera la exigencia de neutralidad estatal, especialmente cuando afecta a minorías religiosas como los alevíes. En este caso, es una premisa esencial que la libertad religiosa incluya la protección frente a la enseñanza dogmática dirigida a minorías, de ahí que la neutralidad estatal exija que el Estado no se identifique con una religión mayoritaria ni convierta el currículo escolar en una herramienta de homogeneización religiosa.

Con carácter general, la jurisprudencia del TEDH ha interpretado que el derecho a la educación consagrado en el artículo 2 del Protocolo n. 1 del CEDH implica necesariamente una función reguladora activa por parte del Estado. Esta función no es uniforme, sino que puede adaptarse a las circunstancias históricas, sociales y materiales de cada comunidad**,** permitiendo así que los modelos educativos varíen en el tiempo y en el espacio.

[26] *Mansur Yalçın y otros c. Turquía*, de 16 de septiembre de 2014, n. 21163/11. Véase: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-146487%22]}

Desde esta perspectiva, el contenido del derecho no se limita al acceso formal a la instrucción, sino que incluye la facultad del Estado para organizar un sistema educativo obligatorio, ya sea mediante centros escolares públicos o a través de mecanismos equivalentes, como la enseñanza privada o la educación en casa, siempre que dichas modalidades aseguren un nivel educativo suficiente y equivalente. De este modo, el Protocolo n. 1 reconoce tanto el margen estatal para estructurar la obligatoriedad escolar como la responsabilidad última de garantizar estándares mínimos de calidad formativa.

En todos ellos, el TEDH ha abordado reiteradamente el conflicto entre la libertad religiosa y las exigencias del sistema educativo aplicando tres principios fundamentales: el margen de apreciación estatal, la neutralidad —o laicidad— como fundamento legítimo de ciertas restricciones y la necesidad de preservar la seguridad, la igualdad y la integración del alumnado. A partir de estos criterios, el Tribunal ha considerado lícito limitar determinadas manifestaciones religiosas en el ámbito escolar. En este orden, el TEDH reafirma que el objetivo último en materia educativa es proteger un entorno pluralista, donde existan diversas ideas y creencias sin imposiciones, consolidando los principios de pluralismo ideológico, respeto a la diversidad, ausencia de adoctrinamiento y tolerancia mutua. Compartiendo que la presencia de un símbolo mayoritario no destruye per se ese pluralismo, pero los Estados deben vigilar que la simbología no se convierta en un instrumento de dominación o discriminación.

En términos generales, estos fallos han servido de base interpretativa para conformar un conjunto de principios que estructuran el contenido del derecho a la libertad religiosa reconocido en el art. 9 CEDH. De su doctrina como hemos podido comprobar, se desprenden tres ejes fundamentales, el principio de neutralidad e imparcialidad del Estado en materia religiosa, la consideración de la libertad religiosa como valor esencial en las sociedades democráticas y el principio de igualdad y no discriminación por motivos religiosos.

En primer lugar, el principio de neutralidad impone a los poderes públicos la obligación de actuar como "organizadores neutrales e imparciales" del ejercicio de las distintas confesiones religiosas, sin inmiscuirse en sus asuntos internos ni valorar la legitimidad de sus creencias. Este criterio fue expresamente formulado por el Tribunal en el asunto *Hasan y Chaush c. Bulgaria*[27], donde se afirmó que el Estado

[27] Sentencia *Hasan y Chaush c. Bulgaria*, Gran Sala, de 26 de octubre de 2000, n. 30985/96. https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58921%22]}

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no debe determinar la legitimidad de las creencias religiosas ni la forma en que estas se manifiestan. Esta doctrina fue reiterada y precisada en *Iglesia Metropolitana de Besarabia y otros c. Moldavia*[28], al establecer que el deber de neutralidad e imparcialidad estatal es incompatible con cualquier apreciación de la legitimidad de una religión o de las modalidades de su expresión. En la misma línea, el caso *Moscow Branch of Salvation Army c. Rusia*[29] reitera que la función del Estado debe limitarse a garantizar un marco de convivencia en el que puedan coexistir diversas confesiones sin interferencia pública.

En segundo lugar, el Tribunal ha subrayado que la libertad de pensamiento, de conciencia y de religión constituye uno de los fundamentos de una sociedad democrática. Esta afirmación, se ha convertido en fórmula clásica en la jurisprudencia del TEDH, y se encuentra ya en la sentencia *Kokkinakis c. Grecia* (1993, §31), donde se declaró que dicha libertad "figura entre los elementos más vitales que conforman la identidad de los creyentes y su concepción de la vida", y que, en consecuencia, resulta indispensable para el pluralismo, "indisolublemente ligado a una sociedad democrática".

Por último, el principio de igualdad y no discriminación por motivos religiosos completa este marco doctrinal. En *Thlimmenos c. Grecia*[30], el Tribunal precisó que el artículo 14 del Convenio no solo prohíbe el trato desigual injustificado, sino también el hecho de que el Estado omita tratar de forma diferente a quienes se encuentran en situaciones significativamente distintas debido a sus convicciones religiosas. Esta línea fue consolidada en *İzzettin Doğan y otros c. Turquía*[31] (2016, Gran Sala), en la que el TEDH apreció una violación del artículo 14 en relación con el 9 por el trato desigual dispensado a la comunidad aleví frente a otras confesiones reconocidas oficialmente.

En conjunto, estas sentencias muestran que la jurisprudencia del TEDH articula la libertad religiosa en torno a un equilibrio entre neutralidad estatal, reconocimiento del valor democrático de la libertad de conciencia y garantía de igualdad. Tales principios constituyen hoy

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[28] Sentencia *Iglesia Metropolitana de Besarabia y otros c. Moldavia*, de 13 de diciembre de 2001, n. 65637/10. https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-59985%22]}

[29] Sentencia *Moscow Branch of Salvation Army c. Rusia,* de 5 de octubre de 2006, n. 72881/01. https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-77249%22]}

[30] Sentencia *Thlimmenos c. Grecia*, Gran Sala, de 6 de abril de 2000, n. 34369/97. https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-162517%22]}

[31] Sentencia *İzzettin Doğan y otros c. Turquía,* Gran Sala, de 26 de abril de 2016, n. 62649/10. https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-162697%22]}

la base sobre la que se construye la protección europea de la libertad religiosa.

Conclusiones

En primer lugar, del análisis realizado se desprende que la articulación entre libertad religiosa y derecho a la educación constituye un eje estructural del sistema de protección de derechos humanos, tanto en el plano internacional como en el europeo y el español. Lejos de ser dos esferas autónomas, ambos derechos se condicionan recíprocamente: la libertad religiosa aporta al derecho a la educación una dimensión axiológica —referida a las convicciones, creencias y valores de las personas y de los grupos—, mientras que la educación opera como presupuesto imprescindible para que la libertad de pensamiento, de conciencia y de religión pueda ejercerse de manera informada, crítica y responsable en sociedades crecientemente plurales.

En segundo lugar y como hemos podido comprobar, el marco normativo internacional estudiado pone de relieve una idea constante: la educación no se limita a transmitir conocimientos técnicos, sino que tiene por objeto el pleno desarrollo de la personalidad humana y la promoción de la comprensión, la tolerancia y la amistad entre naciones, pueblos y grupos religiosos. En este contexto, la dimensión religiosa aparece reconocida como una manifestación típica de la libertad de pensamiento, conciencia y religión, y la escuela se configura como un espacio privilegiado para prevenir la intolerancia y la discriminación mediante la inclusión de contenidos sobre religiones y creencias, siempre que se respeten los principios de objetividad, neutralidad y ausencia de adoctrinamiento.

En este orden, el sistema europeo de protección de derechos humanos, particularmente a través del CEDH y su Protocolo n. 1 así como la jurisprudencia del TEDH, ha desarrollado un cuerpo doctrinal coherente en torno a tres ejes fundamentales: la neutralidad ideológica del Estado, la prohibición de adoctrinamiento y el reconocimiento de un margen de apreciación estatal en materia educativa. Los casos relativos al uso del velo islámico, a la presencia de símbolos religiosos en las aulas y a las asignaturas de contenido religioso o moral muestran que el Tribunal no excluye la presencia de elementos religiosos en la escuela, ni la enseñanza de la religión como tal, pero exige que el diseño de las políticas educativas no identifiquen al Estado con una confesión concreta, no se impongan ideologías ni religiosas a los alumnos, de forma que se haga efectivo el respeto a las convicciones

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de padres y alumnos, especialmente cuando pertenecen a minorías religiosas o de convicciones no mayoritarias. Este estándar europeo sitúa la noción de pluralismo democrático y de diversidad ideológica en el centro de la interpretación del derecho a la educación.

Por su parte, el ordenamiento constitucional español recoge esta misma lógica a través de los artículos 16 y 27 CE y sobre esta base se asienta el principio de laicidad o neutralidad positiva: el Estado no es confesional, pero reconoce la relevancia social del hecho religioso y coopera con las confesiones para hacer efectivos los derechos fundamentales, entre ellos la educación religiosa de los alumnos que así lo deseen. El sistema español de acuerdos de cooperación (con la Iglesia católica y con las confesiones evangélica, judía e islámica) representa una concreción normativa de este principio de cooperación en el ámbito educativo, al reconocer el derecho a la enseñanza religiosa en los centros públicos y concertados. Sin embargo, el análisis realizado evidencia una clara asimetría entre la posición de la Iglesia católica y la efectividad real de los derechos reconocidos a las demás confesiones con acuerdo. Aunque el marco jurídico equipara *de iure* a las distintas confesiones con notorio arraigo, de facto la implantación de la enseñanza religiosa de las minorías es muy limitada y desigual territorialmente, lo que genera una brecha entre el reconocimiento normativo y el disfrute efectivo del derecho. Esta situación cuestiona la plena adecuación del modelo español a los estándares de igualdad, no discriminación y pluralismo religioso exigidos por el derecho internacional y europeo.

Finalmente, el trabajo ha puesto de relieve que la gestión de la diversidad religiosa en el ámbito escolar no puede reducirse a la mera oferta de asignaturas confesionales ni a la tolerancia pasiva de manifestaciones religiosas individuales. Los retos derivados de la multiculturalidad, de los flujos migratorios y de la presencia creciente de minorías religiosas exigen políticas educativas más complejas, orientadas a integrar contenidos sobre religiones y creencias desde una perspectiva cultural, histórica y comparada, también a desarrollar competencias de diálogo intercultural y de resolución pacífica de conflictos y prevenir estereotipos y discursos de odio, finalmente, a garantizar que los centros escolares se constituyan en espacios de convivencia plural, libres de discriminación y de presiones confesionales.

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II

Book reviews

Críticas bibliográficas

Modood, Tariq y Thomas Sealy. 2024. *The new governance of religious diversity*. Cambridge: Polity Press. 180 p.

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Tariq Modood, referente del multiculturalismo, y Thomas Sealy proponen en *The new governance of religious diversity* (2024), una reconfiguración de los vínculos institucionales entre el Estado y la religión. En la gran narrativa sociológica del siglo XX, la "tesis de la secularización" ostentaba un estatus casi dogmático, fundamentada en la premisa de que la modernización de las sociedades conllevaría el inevitable retroceso de la fe hacia la esfera privada y su eventual desvanecimiento como fuerza social. No obstante, la realidad del siglo XXI ha desmentido este supuesto. Fenómenos como la politización de la identidad evangélica en Estados Unidos, el ascenso del Hindutva en la India y la compleja integración de las comunidades musulmanas en Europa demuestran que la religión persiste como una dimensión vibrante, controvertida y determinante de la esfera pública contemporánea.

Para comprender la magnitud de esta propuesta, es imperativo analizar el sustrato epistemológico que Modood y Sealy cuestionan. Los autores sostienen que el secularismo no es un principio universal y ahistórico, sino un conjunto de arreglos políticos contingentes que han sido elevados a la categoría de dogma normativo. Al diseccionar la genealogía del secularismo liberal, la obra revela cómo la exclusión de lo religioso del espacio público no fue un acto de neutralidad, sino una estrategia de pacificación tras las guerras de religión europeas que, con el tiempo, se transformó en una forma de ceguera institucional ante la identidad. Esta ceguera, argumentan, es hoy contraproducente en sociedades donde la pertenencia religiosa es el eje vertebrador de la subjetividad política para millones de ciudadanos.

Es en este contexto donde la obra de Modood y Sealy se erige como una impugnación teórica frente a la rigidez del secularismo liberal. En su lugar, los autores postulan la necesidad de un "secularismo multiculturalizado". Este modelo de gobernanza preserva la autonomía institucional del Estado, pero exige un compromiso activo con las identidades religiosas, reconociéndolas y acomodándolas bajo la rúbrica de bienes públicos y fuentes de capital ético. En última instancia, el libro aspira a rescatar al secularismo de su propia obsolescencia teórica, proponiendo un marco donde la fe no sea

reducida a una cuestión de índole estrictamente personal, sino aprehendida como una característica permanente y legítima del tejido social.

Para comprender la contribución de *The new governance of religious diversity*, primero hay que entender el objetivo de su crítica. Durante décadas, el modelo dominante de gestión de la diversidad religiosa en Occidente ha sido el "liberalismo político", ejemplificado por pensadores como John Rawls. Este modelo sugiere que, para que un Estado sea justo, debe ser "ciego" a las diferencias religiosas. Modood y Sealy desmontan este enfoque, argumentando que este modelo de «ceguera» ante la diferencia no es ni preciso ni viable. Postulan que el separatismo estricto, ejemplificado por la *laïcité* francesa o el muro jeffersoniano, es en realidad una anomalía en el panorama global. Como alternativa, defienden el "secularismo moderado", un sistema donde el Estado y las organizaciones religiosas mantienen su independencia mutua, pero sin excluir la cooperación, el reconocimiento o el apoyo institucional. Los autores recurren a la realidad europea para demostrar que el vínculo Estado-religión siempre ha existido. En la mayor parte de Europa —Alemania con sus impuestos eclesiásticos, Escandinavia con su herencia luterana e, incluso, el Reino Unido— los Estados nunca han sido estrictamente neutrales. Siempre han tenido una conexión con la religión. El problema, argumentan Modood y Sealy, no es la conexión en sí misma, sino la "exclusividad" de esa conexión.

La tesis más aplaudida del libro, destacada por críticos como Mathew J. Guest, es la necesidad de "multiculturalizar" este secularismo moderado mediante una estrategia de "nivelación hacia arriba". Esto implica que el Estado no debe retirar el apoyo a las religiones históricas en nombre de la igualdad, sino extender esas mismas prerrogativas —como la financiación de escuelas, capellanías o festividades— a las minorías religiosas. Este enfoque redefine la fe como una fuente de "capital ético público", instando al Estado a ser "hospitalario" con identidades que, para gran parte del Sur global y las minorías occidentales, constituyen su lente principal a través de la cual ven el mundo.

Modood y Sealy no defienden la religión por sus pretensiones de verdad, sino por su utilidad sociológica y su capacidad de generar cohesión y valores pro-sociales. Al argumentar que las comunidades religiosas poseen reservas de compromiso cívico y redes de apoyo que el Estado secularizado a menudo es incapaz de replicar, los autores sitúan la gobernanza religiosa en el centro de la resiliencia democrática. Esta perspectiva invita a una relectura de las políticas de

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bienestar, sugiriendo que un Estado que colabora con organizaciones de base religiosa no está necesariamente claudicando ante un dogma, sino optimizando los recursos éticos de su población.

El libro destaca por su propuesta de "contextualismo global", rechazando la aplicación de un algoritmo único para la gobernanza. Lo que funciona en Londres puede no funcionar en Nueva Delhi o Kuala Lumpur. Al analizar la gobernanza a través de una lente "macrorregional", admiten que los acuerdos específicos de las relaciones entre el Estado y la religión deben surgir de la historia y la sociología locales. En gran parte del mundo, la distinción entre "religioso" y "secular" no existe de la misma manera que en la Europa posterior a la Ilustración. Al validar el "secularismo moderado", los autores proporcionan una gramática para que los Estados no occidentales sean modernos y democráticos sin despojarse de su patrimonio religioso. Validan la idea de que un Estado puede tener un carácter religioso (o apoyar a las instituciones religiosas) y seguir tratando a las minorías con dignidad e igualdad, siempre que el proceso de "multiculturalización" sea genuino.

Esta propuesta integracionista ha sido, en gran medida, bien recibida y valorada por su utilidad pragmática. En un mundo en el que la identidad religiosa está resurgiendo, el Estado "ciego" a menudo acaba alienando a las poblaciones religiosas, empujándolas hacia el radicalismo o el aislamiento. El libro ofrece, por ejemplo, una forma de integrar a los musulmanes religiosos de Europa. Al reconocer su identidad y facilitar sus prácticas, el Estado fomenta un sentido de pertenencia. En este sentido, cabe decir que el libro ofrece una corrección necesaria a la "desconfianza secularista" que considera toda expresión religiosa en la esfera pública como una amenaza para la democracia. Modood y Sealy argumentan que las organizaciones religiosas son actores sólidos de la sociedad civil, que proporcionan bienestar, sentido comunitario y referentes de sentido fundamentales. El estado comete un error al ignorar este recurso.

Sin embargo, si bien la crítica ha recibido y celebrado esta obra como un conjunto de herramientas pragmáticas para la era posecular, valorando que la "teoría" del secularismo multiculturalizado es intelectualmente sólida, al mismo tiempo es preciso reconocer que también se enfrenta a un fuerte escrutinio en cuanto a su aplicabilidad en una era de profunda polarización.

Una primera limitación consiste en la suposición de "buena fe" que la propuesta de Modood y Sealy requiere en la práctica. El secularismo multiculturalizado se basa en un enfoque dialógico. Requiere que la mayoría esté dispuesta a compartir el espacio y los recursos, y que las

minorías se comprometan de forma constructiva con el Estado. Sin embargo, es imposible obviar que asistimos en la actualidad a una fuerte tendencia global de "polarización afectiva", en la que los oponentes políticos se consideran enemigos antagónicos.

Cuando la religión es considerada una señal de lealtad a la comunidad propia en lugar de un marco de sentido, la "acomodación" que proponen Modood y Sealy se vuelve imposible. En Estados Unidos, por ejemplo, la derecha cristiana suele considerar el pluralismo no como un objetivo, sino como una amenaza para el alma de la nación. En ese contexto, las propuestas de "multiculturalizar" la esfera pública no son recibidas con hospitalidad, sino con hostilidad.

La segunda limitación, y quizá la más peligrosa, es el riesgo del "nacionalismo mayoritario". Modood y Sealy sostienen que el Estado puede mantener una conexión con la religión mayoritaria siempre y cuando dé cabida a otras. Consideran que este vínculo histórico es estabilizador desde el punto de vista cultural. Sin embargo, no valoran la profunda toxicidad y el alcance del populismo religioso moderno. Al legitimar la idea de que el Estado "debe" tener un carácter religioso o reflejar la "cultura" de la mayoría, Modood y Sealy pueden, sin darse cuenta, proporcionar una cobertura a los regímenes nacionalistas étnico-religiosos.

El paso de la "multiculturalización", la parte crucial en la que se integra a las minorías, es fácilmente ignorado por estos regímenes. Si se mantiene el "secularismo moderado" (vínculo entre el Estado y la religión) pero se abandona el "multiculturalismo" (igualdad), lo que queda es una simple supremacía religiosa. Lamentablemente, en muchas partes del mundo, el vínculo entre el Estado y la religión mayoritaria es el principal motor de la opresión de las minorías.

Desde una perspectiva analítica, la obra representa un éxito sociológico notable, en tanto que logra cartografiar la fenomenología religiosa contemporánea con rigurosidad. Los autores demuestran que la estricta laicidad estatal es, en gran medida, una construcción teórica más que una realidad; la persistencia de las identidades confesionales desmiente el mito del "muro de separación". Al sistematizar las diversas variantes del laicismo, Modood y Sealy ofrecen una taxonomía esencial que guarda una mayor correspondencia con la realidad social que las abstracciones normativas de la filosofía política liberal clásica. Esta taxonomía se enriquece mediante un enfoque macrorregional que constituye uno de los mayores aciertos del libro. A diferencia de otros tratados que se limitan al eje transatlántico, Modood y Sealy dialogan con las experiencias de gobernanza en el sudeste asiático y Oriente Medio, reconociendo que la modernidad política no tiene un único

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centro de gravedad. Al hacerlo, descolonizan el concepto de secularismo, permitiendo que naciones con mayorías religiosas robustas —como Indonesia o Marruecos— puedan ser evaluadas bajo estándares de inclusión y pluralismo sin exigirles una ruptura traumática con su herencia confesional.

No obstante, en su vertiente normativa, el texto adolece de un optimismo profundamente anclado en la tradición británica. El arquetipo de éxito que subyace a su argumentación es el modelo del Reino Unido, caracterizado por una Iglesia oficial de ejercicio blando y una financiación estatal pragmática de instituciones educativas de diversas confesiones.

El principal interrogante radica en la transferibilidad de dicho modelo a otros contextos. El modelo de gobernanza británico descansa sobre una institución eclesiástica mayoritaria cuya influencia política es reducida y que muestra disposición a la redistribución de sus privilegios históricos. Por el contrario, en escenarios donde la religión mayoritaria se manifiesta de forma asertiva, identitaria y defensiva, la estrategia de "nivelación" resulta inoperante. En estos contextos, cualquier avance en el reconocimiento de las minorías es percibido por la mayoría como una amenaza. Aquí radica una de las tensiones no resueltas de la obra: el conflicto entre el reconocimiento multicultural y la estabilidad democrática. Si bien la "nivelación hacia arriba" es éticamente superior a la exclusión, en la práctica política puede alimentar la narrativa victimista de las mayorías que sienten que su "estatuto privilegiado" está siendo desmantelado en favor de minorías "foráneas". El libro se beneficia de un análisis profundo sobre cómo el reconocimiento institucional puede, paradójicamente, exacerbar las ansiedades mayoritarias si no va acompañado de una pedagogía ciudadana robusta.

Pese al valor del "marco contextual" propuesto, los autores parecen estar infravalorando la función protectora del secularismo estricto —incluida la *laïcité* francesa— como salvaguarda frente a la tiranía de las mayorías. Al desplazar el principio de separación jurídica en favor de una noción de "hospitalidad" estatal, la seguridad de los grupos minoritarios queda supeditada a la benevolencia del actor institucional dominante. Ante una eventual deriva hostil del Estado, las minorías quedarían desprovistas de una estructura legal infranqueable que garantice su protección. En este sentido, la propuesta de Modood y Sealy requiere una confianza en la integridad de las instituciones estatales que hoy se encuentra en mínimos históricos.

A pesar de estas importantes salvedades, *The new governance of religious diversity* es un texto fundamental. Su mayor virtud es su

realismo con respecto a la persistencia de la religión. Obliga a los responsables políticos a dejar de desear que la religión desaparezca y a empezar a gestionarla como una característica permanente del panorama social. El libro ofrece un lenguaje sofisticado para la "gobernanza", desplazando el foco de las abstracciones constitucionales a los aspectos prácticos de cómo las escuelas, los hospitales y los ayuntamientos interactúan con las comunidades religiosas.

Las críticas relativas a la polarización y al mayoritarismo no invalidan la propuesta desarrollada en el libro. Modood y Sealy han argumentado con éxito "por qué" debemos avanzar hacia un secularismo multiculturalizado. El reto pendiente es "cómo" lograrlo en un mundo en el que la voluntad política para el multiculturalismo se está erosionando rápidamente[1].

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[1] Este trabajo ha sido realizado en el marco del Proyecto de Investigación de Generación de Conocimiento "Diversidad religiosa y convivencia democrática: análisis y propuestas para las políticas municipales" (referencia PID2023-149877NB-100), subvencionado por la Agencia Estatal de Investigación (Ministerio de Ciencia, Innovación y Universidades).

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El volumen colectivo que aquí se reseña, editado por tres destacadas académicas del ámbito de los derechos de las minorías (Roberta Medda-Windischer, Kerstin Wonisch y Alexandra C. Budabin), aborda uno de los principales desafíos de las sociedades pluralistas contemporáneas: la gestión de las tensiones derivadas de las demandas formuladas por grupos religiosos y culturales minoritarios. En particular, la obra se interroga por las condiciones en las que los Estados pueden articular respuestas sensibles y garantistas a dichas demandas sin poner en riesgo la cohesión y la estabilidad de la comunidad política.

Este desafío se ve acentuado por la coexistencia de minorías tradicionales con nuevas minorías surgidas de los flujos migratorios —cuyas segundas y terceras generaciones ya no pueden ser consideradas migrantes—, lo que añade una mayor complejidad al panorama de la diversidad religiosa y cultural de numerosos Estados contemporáneos. En este contexto, las necesidades de acomodo religioso de los grupos minoritarios dan lugar a intensos debates en los que se cuestionan aspectos centrales del constitucionalismo democrático, tales como el alcance de la libertad religiosa en sociedades crecientemente secularizadas, el lugar de la diversidad religiosa en la esfera pública o los límites del reconocimiento de dicha diversidad frente a la preservación de la cohesión social.

Más allá de los modelos clásicos de relación entre el Estado y las confesiones religiosas —tradicionalmente identificados con las fórmulas de Iglesia oficial, separación y cooperación—, lo cierto es que las democracias liberales han mostrado escasa disposición a avanzar hacia esquemas de institucionalización del pluralismo. En este marco, el acomodo de la diversidad religiosa ha tendido a articularse fundamentalmente a partir del principio de igualdad y del derecho a la libertad religiosa. La institucionalización de la diferencia es percibida, por lo general, como potencialmente contraria a los valores fundacionales de las democracias liberales, en particular la justicia y la

igualdad. Desde esta lógica, la gestión de las demandas de las minorías religiosas se plantea como una disyuntiva persistente entre preservar la cohesión social o dar cauce a la diversidad; entre salvaguardar la unidad o favorecer dinámicas de diferenciación.

Sobre este trasfondo teórico y normativo, el volumen colectivo que comentamos presenta siete estudios de caso situados en distintos países de Europa y Oriente Medio, en los que se analizan políticas y medidas concretas de acomodo de la diversidad religiosa concebidas desde parámetros respetuosos con las necesidades de las minorías y, al mismo tiempo, atentos al mantenimiento de la cohesión social.

Dos de los ocho capítulos del libro se centran en el caso de Grecia, que constituye un ejemplo paradigmático de las tensiones teóricas expuestas en la introducción entre pluralismo, igualdad y cohesión social, al abordar una cuestión de especial relevancia para el ámbito de estudio que nos ocupa: la implementación de sistemas jurídicos pluralistas reconocidos por el Estado. En particular, la investigadora Kyriaki Topidi analiza los efectos del pluralismo legal en la región de Tracia occidental, poniendo de relieve cómo la coexistencia de sistemas jurídicos de inspiración religiosa puede dar lugar a situaciones asimétricas mediante el reconocimiento de prácticas moral y jurídicamente reprobables, como la discriminación por razón de sexo. En este contexto, la cuestión relativa a la existencia de una libertad individual efectiva para optar entre las disposiciones derivadas de las políticas de igualdad y aquellas asociadas al reconocimiento de la diversidad adquirió especial relevancia a raíz del caso *Molla Salli c. Grecia*, resuelto por el Tribunal Europeo de Derechos Humanos.

En dicho asunto se dirimía la posible aplicación de la legislación de la Sharía en una cuestión relativa a Derecho de familia, concretamente una sucesión *mortis causa*. La aplicación de la legislación musulmana, en atención a la condición del causante como fiel de este credo, beneficiaba a sus hermanas frente a un testamento otorgado conforme al Código Civil griego en virtud del cual la beneficiaria era su viuda. El litigio planteaba así la cuestión de si resulta admisible el acomodo, dentro de regímenes jurídicos liberales, de normativas de carácter no liberal. La investigadora dedica especial atención al razonamiento del Tribunal Europeo de Derechos Humanos, según el cual la aplicación de una normativa religiosa solo puede considerarse legítima cuando es consecuencia de una decisión libre e individual. En el caso concreto, la aplicación de la legislación musulmana se produjo en contra de la voluntad expresada por Molla Salli y su difunto marido. No obstante, a partir de la primacía atribuida a la elección personal, Silvio Ferrari se pregunta en el apartado de conclusiones del volumen si, en una

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hipótesis distinta —en la que la mujer hubiese aceptado voluntariamente la aplicación de la Sharía aun a costa de la reducción de su legítima—, el Tribunal habría resuelto en el mismo sentido o habría optado por una solución similar a la adoptada por el Consejo de Estado francés en el caso del burka de 2010, en el que se entendió que determinadas decisiones individuales situaban a las mujeres en una posición de exclusión e inferioridad, legitimando así una intervención estatal orientada a "proteger a las mujeres de sí mismas".

La relevancia del caso *Molla Salli* se ve reforzada en el volumen por la inclusión de un segundo capítulo dedicado a este pronunciamiento, firmado por Christos Tsevas. En su contribución, el autor profundiza en el análisis de la sentencia y se interroga acerca de la posibilidad de que el Tribunal Europeo de Derechos Humanos establezca estándares para la gestión de la diversidad religiosa capaces de integrar los requerimientos religiosos de personas migrantes y refugiadas dentro del marco normativo de los derechos humanos en Europa. Esta aparente paradoja del pluralismo legal —en la que se pretende articular la convivencia de distintos sistemas normativos— exigiría, según Tsevas, una vinculación más estrecha entre los ordenamientos jurídicos nacionales, europeos e internacionales en materia de derechos humanos mediante una forma de "traducción constitucional" de las normativas religiosas.

Precisamente, la delicada cuestión del reconocimiento y la gestión del pluralismo normativo, así como las dificultades que plantea su conciliación con los ordenamientos jurídicos domésticos y con el principio de no discriminación, es abordada por el investigador Elham Manea en el contexto del Reino Unido. Su contribución se centra en el análisis del funcionamiento de los consejos de la Sharía, cuya actividad se extiende con frecuencia a ámbitos especialmente sensibles, como las relaciones familiares, la violencia doméstica y los abusos a la infancia. Manea examina asimismo la evolución de estos consejos y los intensos debates públicos que ha suscitado su actuación. Entre las principales críticas formuladas contra estos órganos destacan la discriminación por razón de sexo, la falta de transparencia y la ausencia de mecanismos efectivos de control. El autor subraya la relevancia de tales objeciones en la medida en que el modelo de pluralismo legal británico —calificado como "suave"— impone una carga desproporcionada sobre mujeres y niñas musulmanas, situándolas en una zona de penumbra respecto del Estado de Derecho, dado que los matrimonios celebrados conforme a la Sharía carecen de reconocimiento civil. En la actualidad, las autoridades británicas, tradicionalmente inclinadas hacia una política de *laissez-faire* en esta materia, exploran distintas medidas

para hacer frente a esta situación, entre ellas la exigencia de celebrar y registrar un matrimonio civil de forma simultánea al religioso, así como la introducción de sanciones para los imames que incumplan dicha obligación.

En el caso israelí, donde también opera un régimen de pluralismo jurídico, el análisis de la interrelación entre los tribunales rabínicos y la jurisdicción civil en materia de Derecho de familia permite dialogar con los casos anteriormente examinados —Grecia y el Reino Unido—, al poner de relieve, una vez más, la persistente tensión entre la autoridad de las jurisdicciones religiosas y los principios de igualdad propios de los ordenamientos democráticos contemporáneos. Así lo analizan Elimelech y Avishalom Westreich, quienes sostienen que, si bien las competencias de los tribunales civiles y rabínicos se encuentran formalmente delimitadas, la complejidad del derecho de familia israelí conduce en la práctica a que ambas jurisdicciones apliquen, de manera entrelazada, normas de carácter secular y religioso. De este modo, en la actualidad puede apreciarse una tendencia orientada a limitar la influencia de la jurisdicción rabínica e integrar interpretaciones de corte más liberal en la aplicación de las disposiciones religiosas judías dentro del ámbito de la jurisdicción civil. A pesar de estas reformas, la jurisdicción exclusiva de los tribunales rabínicos en materia de matrimonio y divorcio no puede ser objeto de renuncia por las partes, lo que constituye uno de los principales límites estructurales del pluralismo jurídico israelí desde la perspectiva de la protección de los derechos individuales.

El peso del paradigma comunitario y la pervivencia de la construcción del ideal de ciudadanía en Israel a partir de líneas de fuerza etno-religiosas constituye el objeto del estudio de Anna Parrilli, que complementa el enfoque institucional previamente analizado al desplazar la atención hacia una segunda capa del pluralismo, interna al propio credo religioso, que centra su trabajo en el estudio de caso de las comunidades judías no ortodoxas. Esta metodología permite no solo analizar la complejidad de las relaciones entre jurisdicciones religiosa y secular en el sistema jurídico israelí, sino también la ausencia de pluralismo dentro del mismo credo religioso. Estos déficits también han sido puestos de manifiesto por distintas instancias de Naciones Unidas, incluido el Comité de Derechos Humanos, que ha destacado la falta de marco de protección no solo para las minorías religiosas sino también para las personas no religiosas.

Otro de los aspectos de interés que aborda este volumen colectivo en relación con la gestión del pluralismo religioso es el de los acuerdos entre las minorías religiosas y el Estado. El profesor Francesco Alicino

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analiza el caso del sistema bilateral italiano, que concede a las autoridades un amplio margen de discrecionalidad para seleccionar a las organizaciones con las que negociar y otorgarles el reconocimiento como confesiones religiosas. El autor llama la atención sobre los posibles efectos discriminatorios de este modelo, en la medida en que establece una diferenciación entre aquellas confesiones que han suscrito un acuerdo con el Estado y aquellas que carecen de él. La proliferación de confesiones religiosas como resultado de los flujos migratorios pone de manifiesto las limitaciones de esta orientación bilateral, más adecuada a contextos caracterizados por una menor diversidad de credos. Asimismo, resulta especialmente delicada la cuestión del reconocimiento y de la personalidad jurídica de las confesiones religiosas, un procedimiento que, desde una perspectiva garantista, debería estar abierto a todas ellas. Alicino sostiene que este modelo hunde sus raíces en los credos judeocristianos tradicionales, pero evidencia importantes limitaciones cuando se aplica a confesiones que se sitúan fuera de dichas denominaciones.

Los desafíos derivados de la creciente diversificación del panorama religioso se reflejan asimismo en la contribución de Alessandro Ferrari, quien centra su análisis en las denominaciones musulmanas en Italia. El autor pone de relieve la recurrente tentación de aplicar al contexto islámico el paradigma organizativo propio del cristianismo católico, en particular mediante la búsqueda de un interlocutor único por parte del Estado. Ferrari describe la situación de las asociaciones musulmanas en Italia como una cuestión "congelada", atrapada entre las exigencias burocráticas asociadas al reconocimiento jurídico y la ausencia de un marco normativo adecuado. Como consecuencia, muchas de estas asociaciones han optado por mantener una configuración de carácter privado en lugar de aspirar al reconocimiento formal. A partir de este diagnóstico, el autor propone un cambio legislativo orientado a ampliar el margen de reconocimiento de derechos de aquellas comunidades que, en el marco vigente, no pueden acceder a acuerdos con el Estado.

Las relaciones entre las confesiones religiosas y el Estado en sistemas políticos formalmente secularizados son objeto de un análisis particularmente relevante en la contribución de Kiryl Kascian y Hanna Vasilevich, centrada en la colaboración de la Iglesia Ortodoxa rusa con el Estado en las políticas de integración de migrantes laborales, especialmente en lo relativo a su adaptación cultural y social. Los autores examinan los materiales de integración utilizados por la Iglesia Ortodoxa en su trabajo con personas migrantes y concluyen que, si bien las relaciones Iglesia-Estado se rigen formalmente por criterios seculares, en la práctica este proceso tiende a ignorar el carácter

multicultural de la sociedad, promoviendo el nacionalismo ruso a través de contenidos religiosos y etnoculturales. En este marco, no se reconoce el derecho de las personas migrantes a preservar su identidad y sus tradiciones culturales.

En definitiva, nos encontramos ante un volumen colectivo especialmente estimulante, que aborda la cuestión del acomodo de las prácticas religiosas desde la perspectiva de las nuevas dinámicas y necesidades generadas por los recientes flujos migratorios. Como se ha puesto de manifiesto a lo largo de la reseña, la obra adopta un enfoque eminentemente empírico, articulado en torno a diversos estudios de caso situados en distintas geografías físicas y jurídicas y sustentados en aproximaciones metodológicas plurales.

El análisis comparado de estas experiencias revela que la reconciliación entre el acomodo de las demandas religiosas y las exigencias de la igualdad no constituye una tarea sencilla ni pacífica. Antes bien, el creciente pluralismo religioso y cultural derivado de la movilidad humana no ha hecho sino intensificar la complejidad de este equilibrio. Sin embargo, el volumen muestra con claridad que no existen atajos normativos ni soluciones unilaterales: la construcción de un sentido de pertenencia y de cohesión social solo puede alcanzarse mediante procesos sostenidos de diálogo, negociación y reconocimiento mutuo, alejados tanto de la exclusión como de la indiferencia o la imposición.

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