

Crucifixes in classrooms: the pedagogical assumptions of the European Courts

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Abstract

Increasingly, courts across Europe are passing judgement on issues of religion and education, but the pedagogical assumptions that often underpin their decisions have not been fully explored. This paper considers the 2011 decision of the European Court of Human Rights in *Italy v Lautsi*, which concerned whether the display of a crucifix in a classroom wall infringed the pupils' right to freedom of belief. First, the increasing juridical involvement in issues of religion and education is outlined, and the challenges this presents. Next, I describe the particular circumstances of the *Lautsi* case and consider the pedagogical issues raised by the judges, both in the Italian and European Courts, suggesting three broad positions. These are then reviewed from a socio-cultural perspective so as to examine the different judges' pedagogical assumptions about religious symbols. Their differing assumptions about the spatial and symbolic contexts of classrooms are outlined, and finally the implications of these assumptions for judicial decisions on religion and education are evaluated.

1. Introduction: law, religion and education across Europe

Courts across Europe have increasingly adjudicated on religious freedom and education. These issues have become more contested (Hunter-Henin 2011), because the historically established patterns of interaction between states, religions and schools are now questioned, interrupted or

replaced in law and policy, particularly in the European Court of Human Rights ('ECtHR'), under Article 9 of the European Convention on Human Rights, which states that:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others. (ECtHR undated)

This article has been the basis for several challenges, relating to either or both of the two clauses, on issues of: curriculum and pedagogy in *Folgerø and others v Norway*¹ and *Zengin v Turkey*²; teachers' dress in *Dahlab v Switzerland*³; assessment, in *Grzelak v Poland*⁴. The ECtHR has also judged, in *Kelsen and others v Denmark*, on whether sex education is an infringement of these freedoms⁵.

The ECtHR's role is not easy. These cases are connected with even broader issues of religious freedom, such as employment law⁶ or press freedom, and judges will consider the legal implications of earlier decisions on all these issues when deciding on any one of them. Furthermore, legal discussions arising out of these cases often focus on the interplay between human rights and national constitutional arrangements for addressing religious freedom, and so are bound up in the formal religious or secular status of different states, from strict separation of

¹ ECtHR *Folgerø and others v Norway* (2008) 26 EHRR 47

² ECtHR *Zengin v Turkey* (2008) 26 EHRR 44

³ ECtHR *Dahlab v Switzerland* (2001) Application No. 42393/98

⁴ ECtHR 15 June 2010 *Grzelak v Poland*, Application no. 7710/02

⁵ ECtHR *Keldsen, Busk Madsen and Pedersen v. Denmark* [1976] 1 EHRR 711

⁶ *Sahin v. Turkey*, Application no. 44774/98, ECtHR, 10 November 2005

the state from any religious establishment, such as the French model of *laïcité*, to a historically established church, such as in Norway or England, or to the more recent post-Communist re-establishment of religious identity, such as in Poland or Hungary. Thirdly, the judgements of supra-national courts will have implications across a range of different countries: a decision of the European Court about religious education in Norway has implications for Turkey or Portugal, even though their educational systems (e.g. Alexander 2000; Raveaud 2005) and constitutional arrangements may be very different.

Unsurprisingly, national courts across Europe have also passed judgement on similar issues, including: curriculum, e.g. in England on the inclusion of humanism in religious education⁷; pupils' religious dress and symbols, in for instance France, England (Hill 2011, see also Poulter 1997), Germany (Lock 2011) and Spain (Garcia Olivia 2011); teachers' religious dress and symbols, in for instance Germany, notably the *Ludin* case⁸ (Lock 2011), and England⁹ (see Vickers 2011); admissions policies, e.g. in England, the Jewish Free School case¹⁰; corporal punishment¹¹ (Cranmer 2011); and - the focus of this paper - the display of religious symbols in classrooms in state schools, in Germany (Lock 2011), Spain (García Olivia 2011) and - of course - Italy.

Judgements in the national and supranational courts are usually about aspects of school organisation or curriculum and pedagogy, and Arthur has discussed some of the organisational implications of legal decisions (Arthur 2008; Arthur & Holdsworth 2012). Pedagogical processes have received less attention, though a notable exception is Cumper's (2011) analysis of the different judicial views in ECtHR of the goals of religious education, in which he showed judicial confusion between the subject as religious instruction and as the impartial study of religions, thereby demonstrating 'a latent uncertainty as to how religion should be taught in the classroom' (p. 222). This paper is intended to contribute to this discussion by considering a landmark case,

⁷ R (Fox) v Secretary of State for Education [2015]: <https://www.judiciary.gov.uk/wp-content/uploads/2015/11/r-fox-v-ssfe.pdf>

⁸ Bundesverwaltungsgericht, 2 C 21.01

⁹ *Asmi v Kirklees Metropolitan Council* [2007] ICR 1154

¹⁰ *R (on the application of E) (Respondent) v. Governing Body of JFS and the Admissions Appeal Panel of JFS (Appellants) and others* (2009) UKSC 15

¹¹ *Campbell and Cosans v United Kingdom* (1993) 3 EHHR 293 Series A no. 48

*Italy v Lautsi*¹², which concerned whether the display of the crucifix in Italian state schools was a breach of pupils' human rights. The case sparked considerable controversy over its implications for human rights law and the conceptualisation of secular education (e.g. Temperman 2012). Elsewhere, I have suggested that the incorporation of any legal decisions into policy and practice is not straightforward, because of the disconnection between the contexts of law and policy formulation and the context of practice (Fancourt 2013, 2015); this case presents some specific insights into what judges consider happens in classrooms, and therefore into one aspect of these potential disconnections.

2. *Lautsi v Italy*: the case

The background to this complex case is as follows: in 2001, Dataico and Sami Albertin (aged 11 and 13) were attending the *Istituto comprensivo statale Vittorino da Feltre*, in Abano Terme, a small town in the province of Padua. In all the school's classrooms, a crucifix was hanging on the front wall, by the blackboard. The parents objected and at a governors' meeting asked that all the crucifixes be removed. The governors however voted to keep the crucifixes, so the pupils' mother took the matter to the local administrative court, under both Italian law, on the grounds of equality, religious freedom and state impartiality, and under the convention on Human Rights, on grounds of religious freedom. The Minister of Education joined the proceedings, arguing that school regulations, dating from 1924, required the hanging of crucifixes in every primary and elementary school classroom. The administrative court referred a potential constitutional issue - the status of the 1924 regulations from the Fascist period - to the constitutional court, which referred it back to the administrative court to decide.

The administrative court decided that while schools should be secular in ethos, the crucifix could nevertheless remain, because:

Although the crucifix was undeniably a religious symbol, it was a symbol of Christianity in general rather than of Catholicism alone, so that it served as a point of reference for

¹² ECtHR Grand Chamber *Lautsi v Italy* (2011) Application no. 30814/06

other creeds. It went on to say that the crucifix was a historical and cultural symbol, possessing on that account an “identity-linked value” for the Italian people, in that it “represent[ed] in a way the historical and cultural development characteristic of [Italy] and in general of the whole of Europe, and [was] a good synthesis of that development”.¹³

It was therefore not only religious but also national - and indeed European:

It can therefore be contended that in the present-day social reality the crucifix should be regarded not only as a symbol of a historical and cultural development, and therefore of the identity of our people, but also as a symbol of a value system: liberty, equality, human dignity and religious toleration, and accordingly also of the secular nature of the State – principles which underpin our Constitution. (ibid.)

The pupils’ mother appealed against this decision to the Supreme Administrative Court, which also rejected her appeal, holding that,

...in Italy the crucifix symbolised the religious origin of values (tolerance, mutual respect, valorisation of the person, affirmation of one's rights, consideration for one's freedom, the autonomy of one's moral conscience vis-à-vis authority, human solidarity and the refusal of any form of discrimination) which characterised Italian civilisation. (Ibid, paragraph 16)

However they included a more refined argument, that the crucifix’s meaning was contextual:

Quite clearly, the crucifix is in itself a symbol that may have various meanings and serve various purposes, above all for the place in which it has been displayed. In a place of

¹³ ECtHR Grand Chamber *Lautsi v Italy* 18 March 2011, Application no. 30814/06, paragraph 15

worship the crucifix is properly and exclusively a “religious symbol”, since it is intended to foster respectful adherence to the founder of the Christian religion. (ibid, paragraph 17)

Furthermore, this contextual meaning could vary depending on the pupils’ religiosity:

In a non-religious context like a school, used for the education of young people, *the crucifix may still convey the above-mentioned values to believers, but for them and for non-believers its display is justified and possesses a non-discriminatory meaning* from the religious point of view if it is capable of representing and evoking synthetically and in an immediately perceptible and foreseeable manner (like any symbol) values which are important for civil society, in particular the values which underpin and inspire our constitutional order, the foundation of our civil life. In that sense the crucifix can perform – even in a “secular” perspective distinct from the religious perspective specific to it – a highly educational symbolic function, irrespective of the religion professed by the pupils. (ibid, paragraph 17, emphasis added)

Thus not only could the same object mean different things in different locations, depending on the context, but also for believing young people in school it could possess both its religious *and* secular meanings.

Perhaps unsurprisingly, the pupils’ mother then appealed to the ECtHR. The first court upheld her appeal, overturning all the Italian courts. One line of reasoning was that even if the crucifix had a range of meanings, its main meaning was indisputably religious:

...among the plurality of meanings the crucifix might have the religious meaning was predominant. It accordingly considered that the compulsory and highly visible presence of crucifixes in classrooms was capable not only of clashing with the secular convictions of the [pupils’ mother], whose children attended at that time a State school, but also of

being emotionally disturbing for pupils of non-Christian religions or those who professed no religion. (Ibid, paragraph 17)

The crucifix thus impacted both on the children, and on the mother's right to raise her children according to her own beliefs. Further,

[t]he Chamber emphasised that the “negative” freedom of religion was not limited to the absence of religious services or religious education: it extended to practices and symbols expressing, in particular or in general, a belief, a religion or atheism. It added that this “negative right” deserved special protection if it was the State which expressed a belief and dissenters were placed in a situation from which they could not extract themselves if not by making disproportionate efforts and sacrifices. (Ibid, paragraph 31)

In this section, the notion of a constraining ‘situation’ which imposed on pupils’ beliefs became explicit, though it is unclear how this would manifest itself, or indeed what might constitute a disproportionate effort or sacrifice by pupils.

However, the Italian Government appealed against this decision to the Grand Chamber of the Court. They were joined by the governments of ten other countries which also displayed crucifixes in their classrooms, namely: Armenia, Bulgaria, Cyprus, Greece, Lithuania, Malta, Monaco, San Marino, Romania and the Russian Federation. Against them, the Lautsi family were joined by: secularist organisations from Italy, France, Germany and Greece; three international human rights groups; thirty-three members of the European Parliament, acting collectively. It is striking quite how much this issue mattered to so many different countries, organisations and individuals.

The Grand Chamber reversed the decision of the Chamber, holding that the crucifixes were neither an infringement of the mother's nor the children's rights. All seventeen judges concurred, and four made particular arguments. An initial point was quasi-constitutional, which was that it did not have to decide on the secular or religious nature of the Italian state; its decision was solely on whether or not there was an infringement of the applicant's human rights. It then addressed the central issue, but first pointed out that it has not been presented with any evidence that the crucifix had affected the pupils' beliefs, nor that any teachers had deployed it in a proselytising manner:

There is no evidence before the Court that the display of a religious symbol on classroom walls may have an influence on pupils and so it cannot reasonably be asserted that it does or does not have an effect on young persons whose convictions are still in the process of being formed. (ibid paragraph 66)

Moreover, there was no evidence that the children's teachers had referred to the crucifix in a tendentious way (ibid paragraph 74).

The court was therefore deciding on a theoretical consideration of the pedagogical effects of the crucifix, without any personal evidence from any witnesses, or any other empirical evidence.

Like the First Chamber, the Grand Chamber rejected the argument that the crucifix was essentially a secular symbol in schools; it is 'a sign which, whether or not it is accorded in addition a secular symbolic value, undoubtedly refers to Christianity' (ibid, paragraph 71). Nevertheless, unlike the First Chamber, it rejected the ensuing judgement that a crucifix was a 'powerful, external symbol' (ibid paragraph 73), holding that it was 'an essentially passive symbol' (ibid, paragraph 72). This was elaborated by comparing it to religious education or religious activities, as in the previous cases on religious education, *Folgerø* and *Zengin*, mentioned above. It pointed out that schools could allow other religious symbols, e.g. the wearing of hijab or crosses, or could celebrate a variety of festivals, e.g. the end of Ramadan. Indeed, in a separate concurring judgement, one judge (Rosakis) argued that presence of elements from different religions was 'a major factor in "neutralising" the symbolic importance of the presence of the crucifix in State schools' (ibid, page 37), though neither what neutralisation meant nor how it was effected was explained. Another judge (Bonello) took an even stronger view, pointing out that

Italian education was steeped in Christian norms and traditions: ‘Ms Lautsi could hardly object to the school holidays following Christian festivals’, for instance (ibid, Consenting judgement, paragraph 1.6). He also highlighted the lack of evidence of any indoctrinatory effect, pointing to Italian history:

The presence of a crucifix in a schoolroom does not seem to have hindered any Italian in his or her liberty to believe or to disbelieve, to embrace atheism, agnosticism, anti-clericalism, secularism, materialism, relativism, or doctrinaire irreligion, to recant, apostatise, or to embrace whatever creed or “heresy” of their choice they find sufficiently appealing, with the same vigour and gusto others freely embrace a Christian faith. (Ibid, paragraph 2.11)

The litigation concluded, though the discussion had only just begun. Unsurprisingly, it was subject to legal scrutiny, both for the constitutional issues it raised (e.g. Movsesian 2012; Jiménez Lobeira 2014) and well as on the more specific question of human rights (e.g. Martínez-Torrón, 2012; Temperman 2012). What however has been less explored is any pedagogical analysis, even though the parties and the courts make a number of assumptions and claims about educational processes in classrooms - what Mawhinney (2012) described as a ‘semiotic cocktail’.

3. Pedagogy and ‘passive symbols’

The central pedagogical issue is whether and how a symbolic object can teach or indoctrinate. Can part of the school’s design or decoration have an effect on pupils’ learning? How might it be activated or neutralised? The Lautsi family argued that it taught something of itself, and the Italian State agreed, but that its meaning was secular. The final judgement was that the crucifix is a ‘passive symbol’ (ibid, paragraph 72), rather than being ‘active’. The point was highlighted in Bonello’s judgement:

The Convention specifically and exclusively bans any *teaching* in schools unwelcome to parents on religious, ethical and philosophical grounds. The key word of this norm is obviously “teaching” and I doubt how far the mute presence of a symbol of European cultural continuity would amount to teaching in any sense of that fairly unambiguous word.... (ibid, consenting judgement paragraph 3.2)

From an educational perspective - indeed from the account of the case so far - this key word is far from unambiguous. What is striking is how the potential for this mute object to affect teaching and learning was argued and explained by the parties and the courts.

From the case account, three broad ideas about teaching emerge. First is the position that there is a direct relationship between the crucifix and the pupil. The symbol on the wall had an active message and meaning, and its presence was intended to inculcate this meaning in the pupils.

Initially, in the Italian courts, the idea of the symbol inculcating values was not disputed, and the Italian state simply argued instead that the crucifix simply carried a different, secular meaning. It was accepted by both sides that the symbol ‘taught’ something in and of itself. This is implicitly connected to an understanding of pupils’ agency – their ability to accept or reject the symbolic meaning presented to them. The Chamber of the European Court had pointed to the pupils’ vulnerability in this respect: they ‘were placed in a situation from which they could not extract themselves if not by making disproportionate efforts and sacrifices’ (Ibid, paragraph 31).

However, Bonello’s judgment in the Grand Chamber made the opposite point forcibly, mentioned above, that millions of Italian children have been taught under it, but managed to reject it (ibid, p. 41, paragraph 2.11). The issue had also arisen earlier in a German case, in 1996, before the German Federal Constitutional Court¹⁴ (Lock 2011), in which parents, followers of Rudolf Steiner, objected to large crucifixes (80 x60 cm) next to the blackboard in their child’s class, which were required under Bavarian school regulations. Initially, the school and parents agreed on a compromise, which was to replace them with a plain cross, without the ‘dying man’s body’¹⁵, and place them above the door. The parents then asked for these to be removed, but the school

¹⁴ Bundesverwaltungsgericht, 2 C 21.01

¹⁵ "sterbenden männlichen Körpers"

refused, considering it had done enough. In the Constitutional Court, the parents' appeal was upheld, as it was deemed to be 'learning under the cross'¹⁶, and considered that 'children especially and young people are easily influenced; their ability to resist against influences and to make their own critical judgement is far lower than that of adults'¹⁷. In this discussion, pupil's lack of agency was the key to the crucifix's pedagogical effect, and the significance of the *Lautsi* decision was to call in to doubt a number of such cases across Europe.

Second, for others the teacher's role in mediating between the crucifix and the pupils was significant. Indeed, this was decisive in the final analysis. There was no evidence that teachers had referred to the crucifix, or imposed its meaning on the pupils. On this view, there could be no 'learning' or inculcation without explicit spoken teaching. Thus pedagogically the crucifix required a teacher to activate it, and make its meaning explicit. It was this that would impinge coercively on the pupils, whether in lessons, assemblies or morning prayers.

Third, wider social practices were alluded to, which suggested a more subtle interplay between the pupils, the teachers and the symbol. One view, in the Italian courts, was that the crucifix carried a purely religious meaning in a church, but a secular meaning in school. This implied that wider patterns of place and location had an effect on meaning, which could determine how pupils interpreted a particular object (though they also held that for religious pupils it would carry both meanings). Judge Rozakis's opinion in the Grand Chamber reflected a contextual position, when he held that the display of non-Christian symbols and the marking of non-Christian festivals would 'neutralise' the presence of the crucifix, by exemplifying a 'liberal' approach to different religions and beliefs (ibid. p. 37): the wider practices of the school could make a difference to how the crucifix was interpreted. This point is also made in relation to the Spanish law, that religious freedom is not put in jeopardy by a crucifix, as long as there is 'a welcoming and respectful approach to non-Christians' (García Olivia 2011, p. 201). The issue also arose in the earlier German case; the significant pedagogical point here was why the school and parents initially thought that the cross above the doorway was effectively less 'active' than the crucifix by the

¹⁶ "Lernen unter dem Kreuz"

¹⁷ 'Gerade Kinder und Jugendliche seien leicht beeinflussbar; ihre Fähigkeit, sich gegen Einflüsse zur Wehr zu setzen und sich ein eigenes kritisches Urteil zu bilden, sei weit geringer als bei Erwachsenen'

blackboard. The classroom arrangement was important; though arguably walking under the symbol is more significant than simply looking at it. In this discussion, the pedagogical effect of the crucifix was activated, or de-activated, by spatial and social factors.

From this analysis, three issues emerge: the relationship between the symbol and pupil identity; the role of the teacher; the wider social and cultural practices, including spatial organisation. To make sense of the pedagogical claims underpinning the case, the interconnections between these three issues will be explored.

4. Socio-cultural theories of visual culture

It has long been recognised, notably in socio-cultural theories of pedagogy (Vygotsky 1978; Wertsch 2009) that the cultural and social elements of teaching and learning are as important as the learners' inner mental development: 'one has to analyse the cultural conditions in order to understand the particular processes in learning' (Afdal 2010, p. 53). Teaching and learning are deeply embedded within all aspects of the cultural and social context (e.g. Alexander 2000; Raveaud 2005), and therefore the relationship between instructional processes and the spatial and visual context should be explored (Daniels 2001). Ivic, summarising Vygotsky's legacy, suggested that education,

...implies a certain structuring of time *and space* and is based on a system of social relations (between pupils and teacher, between the pupils themselves, between the school and its surroundings, and so on). Indeed, the impact of formal education depends to a considerable extent on these aspects of the 'educational medium'. (Ivic 1994, p. 10, emphasis added)

At a practical level, it has long been recognised that school and classroom displays are an important part of learning (Phelps 1969; Cooper 1996; Andrew-Power 2009), and moreover

various researchers have sought to theorise the effects of such displays. Thus Prosser (2007) argued that a school's visual culture reflects its organisational culture, and points out how this can also be seen as what sociologists of education have termed the 'hidden curriculum', but also that this visual culture is evidently *not* hidden: 'It is the trace and markings of the past, present and probably the future hidden curriculum' (14), and which influences how pupils come to think of themselves in relation to it (see also Kress, Jewitt, Bourne, Franks, Hardcastle & Jones 2005; van Leeuwen 2008). Similarly, Daniels (1989) exposed the pedagogical assumptions behind classroom displays of pupils' work, showing the organisational politics of curriculum and pedagogy in operation.

Moreover, it is not simply pupils' identities as learners, but also their religious identities, that are in question. Multiple dimensions of their identities are at stake, but these are not formed reactively, simply an outcome of context. They react to the context, as Afdal (2010) observes 'the subject can get back at the world' (p. 53), and much research shows that pupils have considerable agency as to how much they accept or reject the school's official position; thus Casson (2011) shows how pupils in a Catholic school position their religiosity in a variety of ways, with varying degrees of acceptance or rejection of the school's official ethos and teaching (see also Bertram-Troost, de Roos & Miedema. 2009). Indeed, this echoes wider educational research which has shown how pupils can actively position themselves against manifest intentions of schooling. It is naive to assume that pupils unquestioningly adopt whatever schools intentionally or unintentionally present to them; indeed a common literary trope is of the hero's identity formation in the face of his or her schooling.

The crucifix's effect might however be more subtle. The relationships between individuals, organizations and the spaces within which they work have been the focus of studies of the semiotics of classrooms (van Leeuwen 2008) and studies of school design and architecture, which have often sought to conceptualize the socio-spatial networks and relations (Scott-Watson 2008; OECD 2011; Tse, Learoyd-Smith, Stables & Daniels 2015). For instance, the architects, Sailer & Penn (2010), have suggested that:

Humans shape their buildings through design practice (social agency affecting spatial structure), humans shape their organisations through management practice (social agency affecting social structure), then buildings shape organisations (spatial agency affecting social structure), and then both organisations as well as buildings constrain agents in their behaviours (social structures and spatial structure-agency affecting social agency); in turn, humans change the way they shape buildings and organisations, starting the cycle of influences again. (p. 13)

Thus the architecture and design of schools impinges on both the social organization, and the learning, but the processes of teaching and learning also impinge on social organization and on school's architecture and design.

5. A spatial pedagogy of religious symbols

These ideas offer broad insights for understanding the place of crucifixes in classrooms, particularly recognition that social structures and spatial structure interact with instructional pedagogy. Crucifixes would clearly be part of the physical structure, but their effect on individual pupils is mediated through both the organisation and the spatial networks of schooling. The classroom organisation may reflect assumptions about the relationship between teacher and pupil, and about the values of the institution, and other institutional practices of teaching and learning may amplify or mute these arrangements (Kress et al. 2005; Van Leeuwen 2008). This is hinted at in the nuanced discussions in the German case mentioned above; the crucifix can be above the blackboard – above even the teacher: ‘Lernen unter dem Kreuz’ – yet the earlier compromise had been both modify the symbol (from a crucifix to a cross), and move it to above the door.

In some historical images of classrooms, the crucifix is often located above the blackboard, in front of a traditional classroom, with the teacher's desk on a bias front of the rows of desks, all facing towards the blackboard, and therefore the crucifix. Here the classroom mirrors a church, facing forwards an image of the crucified Christ, as an alternative altarpiece. The spatial

arrangement of the cross, teacher, blackboard, desks and pupils presents a coherent pattern of explicitly shared values, in which different forms of authority – educational, moral and religious – are mingled. Further, such classrooms are unlikely to have displays of pupils' work on the walls; such classrooms are not for the celebration of pupils' endeavours, but the transmission of formal disciplines of knowledge. A typical model of a traditional approach is set out in Figure 1, where didactic and religious authority are both organised hierarchically and in parallel: to face the teacher is to face the crucifix.

However, in more pupil-centred approaches to pedagogy, the crucifix could have a less imposing effect, simply alongside pupils' work, or other displays, which populate the classroom walls (Cooper 1996; Andrew-Power 2009). Recent discussion of school design is aimed at different educational priorities, underpinned by reordered values, and often using new technologies; thus Kühn (2010) argues for,

Different spaces for small and large groups; flexible learning spaces that can provide various settings with minimal effort; a social area that, rather than compartmentalising teachers and students, provides for intermediate spaces; and a better relationship between the school and the urban environment.... But the classroom-based school has not yet been replaced by a new globally accepted model that together would constitute *the* 21st century school (p. 21, original emphasis).

In such settings there is no clear locus of authority, and they aim at more independent but also more collaborative approaches to learning. Pupils work on computers or tablets (no blackboard here), or in informal group work settings, and they do not face towards a single locus of authority. Learning is independent and collaborative. An example of such a plan is set out in Fig 2, where pupils are more likely to be focused on their peers or their tablets, and the teacher's location is not permanently fixed; the crucifix, in a corner, is incidental to the pedagogical dynamics of the space. This is not to suggest that it would not have a presence, but the contrast with figure 1 is striking in showing how the social organisation of the classroom space could affect the symbol's meaning and force. The final aspect of this process is the degree of pupil agency, or as Donello held, 'his or her liberty to believe or to disbelieve' when confronted by a crucifix. In a more

traditional type of classroom, as in Fig. 1, there might be more argument that pupils could only extract themselves from its symbolic power by making disproportionate efforts and sacrifices, however in a more open classroom the argument would be harder to make, because it would seem to involve the minimum of effort, and very little sacrifice at all.

This analysis would suggest that symbols are not *merely* passive, as the Grand Chamber held; they can carry meanings even without explicit teaching to bring them to life. However, their meaning can be mediated in other ways; if they can ‘implicitly’ teach, so can other aspects of schooling. Thus they are not automatically powerful external symbols, as the First Chamber held; their meaning is situated within the spatial dynamics and organisational practices of the school, amidst a range of other symbols and signs. In this respect, there are a range of factors to consider. Some are purely physical and locational, such as the size of the crucifix, the particular wall on which it is affixed, or whether other religious symbols are also displayed around it. Others concern classroom-based pedagogical issues such as the ways that teachers refer to it in their teaching, behave towards it, and their wider dialogical practices (Fancourt 2016; Kress et al. 2005). Lastly, there are wider school-based pedagogical issues such as the school’s approach to diversity more generally, or the school’s wider patterns of teaching and learning.

6. Conclusion

The purpose of this analysis was to shed light on the ways that courts in the *Lautsi* case conceptualised the effect of the crucifix in a classroom. In picking apart both the different courts’ judgements, and in a wider reflection on the spatial and symbolic dynamics of classrooms, It is perhaps unsurprising that the Grand Chamber found it hard to decide, given an increasing awareness of these different potential issues in the different judgements, and perhaps as seventeen judges became involved in the Grand Chamber hearing, with their own cultural and biographical assumptions about classrooms, religions, learning and teaching. Cumper’s ‘latent uncertainty’ (Cumper 2011, p. 222) as to what religious education might be is further compounded, since not only is the nature of religious education in doubt, but also the process of education itself.

What is clear is that these issues seem to matter - to parents, to schools, and to the courts. There is an almost visceral quality in many of the reactions by different courts and different judges to this issue, which hint at different elements of the spatial and symbolic contexts of learning: the individual pupil's autonomy to accept or reject the symbol; the 'meaning' of the symbol itself; the organisational patterns of learning and teaching which surround it; the spatial dynamics of the setting of the symbol in the classroom. Yet while the courts and the lawyers alluded to these different processes, they do not do so coherently or consistently, and while the courts continue to make judgements that are pedagogically unsystematic, the judgements are likely to be difficult to make sense in schools. The fact that judgments on this particular issue are likely to have a direct impact on other issues, most notably the wearing of hijab or other religious clothing, will only add to the complexity. However, from the perspective of educational research, it is also clear that more work needs to be done in studying the actual dynamics of religious symbols in classrooms, to contribute to our understanding of these complex processes.

References

- Afdal, G. (2010). *Research religious education as a social practice*. Münster: Waxmann.
- Andrew-Power, K. (2009). *Display for learning*. Network Continuum: London.
- Arthur, J. (2008). Learning under the cross: legal challenges to 'cultural-religious symbolism' in public schools, *Education and the Law*, 20:4, 337-349.
- Arthur, J. and Holdsworth, M. (2012). The European Court of Human Rights, Secular Education and Public Schooling, *British Journal of Educational Studies*, 60:2, 129-149.
- Bertram-Troost, G. de Roos, S. and Miedema, S. (2009). The relationship between religious education and religious commitments and explorations of adolescents: on religious identity development in Dutch Christian secondary schools. *Journal of Beliefs & Values*, 30:1, 17-27.
- Casson, A. (2011). The right to 'bricolage': Catholic pupils' perception of their religious identity and the implications for Catholic schools in England. *Journal of Beliefs & Values*, 32:2, 207-218.
- Cooper, H. (1996). *Display in the Classroom: principles, practice and learning theory*. London: David Fulton.
- Cranmer, F. (2011). Beating people is wrong: *Campbell and Cosans, Williamson* and their Aftermath. In Hunter-Henin, M. (ed.) 2011. *Law, Religious freedoms and education in Europe*. (pp. 283-306) Farnham: Ashgate.

Cumper, P. (2011). Religious Education in Europe in the Twenty-First Century. Hunter-Henin, M. (ed.) 2011. *Law, Religious freedoms and education in Europe*. (pp. 207-227) Farnham: Ashgate.

Daniels, H. (1989). Visual Displays as Tacit Relays of the Structure of Pedagogic Practice. *British Journal of Sociology of Education*, 10:2, 123-140.

European Court of Human Rights (undated). *European Convention on Human Rights*. Strasbourg: European Court of Human Rights.

Fancourt, N. (2013). Religious education across Europe: contexts in policy scholarship. In J. Everington, G. Skeie, I. ter Avest and S. Miedema (Eds.) *Exploring context in religious education research* (pp. 193-211). Münster: Waxmann.

Fancourt, N. (2015) Re-defining learning about religion and learning from religion: A study of policy change. *British Journal of Religious Education*. 37:2 122-137.

Fancourt, N. (2016). The classification and framing of religious dialogues in two English schools. *British Journal of Religious Education*, 38:3, 325-340.

García Olivia, J. (2011). The Controversy surrounding the denominational teaching of religion in Spanish state schools. In Hunter-Henin, M. (ed.) *Law, Religious freedoms and education in Europe*. (pp. 183-203). Farnham: Ashgate.

Hunter-Henin, M. (ed.) (2011). *Law, Religious freedoms and education in Europe*. Farnham: Ashgate.

Ivic, I. (1994). Lev S. Vygostky. In *Prospects: the quarterly review of comparative education*. 24: 3/4, 471–485.

Jiménez Lobeira, P. (2014). Veils, Crucifixes and the Public Sphere: What Kind of Secularism? Rethinking Neutrality in a Post-secular Europe. *Journal of Intercultural Studies*, 35:4, 385–402.

Kress, G., Jewitt, C., Bourne, J. Franks, A., Hardcastle, J., Jones, K. and Reid, E. (2005). *English in Urban Classrooms*. London: RoutledgeFalmer.

Kuhn, (2010). Learning environments for the 21st century. In OECD, *Designing for Education: Compendium of Exemplary Educational Facilities 2011*, (pp. 19-23) Paris: OECD Publishing.

Lock, T. (2011). Of Crucifixes and Headscarves: Religious symbols in German Schools. In Hunter-Henin, M. (Ed) *Law, Religious freedoms and education in Europe*. (pp. 347-370) Farnham: Ashgate.

Martínez-Torrón. J. (2012). The (Un)protection of Individual Religious Identity in the Strasbourg Case Law. In *Oxford Journal of Law and Religion*, 1:2, 363–385.

Mawhinney A. (2012). Crucifixes, classrooms and children: a semiotic cocktail. In Temperman J. (Ed) *The Lautsi Papers: Multidisciplinary Reflections on Religious Symbols in the Public School Classroom*. (pp. 93-112) Leiden: Brill.

Movsesian, M. (2012). Crosses and Culture: State-Sponsored Religious Displays in the US and Europe. In *Oxford Journal of Law and Religion*, 1:2, 338–362.

OECD (2011). *Designing for Education: Compendium of Exemplary Educational Facilities 2011*, Paris: OECD Publishing.

Phelps, R. (1969). *Display in the classroom*. Oxford: Blackwell.

Poulter, S. (1997). Muslim headscarves in school: contrasting legal approaches in England and France. *Oxford Journal of Legal Studies* 17(1), 43-74.

Raveaud, M. (2005). Hares, tortoises and the social construction of the pupil: differentiated learning in French and English primary schools. *British Educational Research Journal*, 31:4, 459-479.

Sailer, K. and Penn, A. (2010). Towards an Architectural Theory of Space and Organisations: Cognitive, Affective and Conative Relations in Workplaces. 2nd Workshop on Architecture and Social Architecture, EIASM, Brussels, May 2010. Available at: http://discovery.ucl.ac.uk/1342930/1/paper_sailerpenn_archorgtheory_final.pdf [01.11.16]

Scott-Watson, W. (2008). *Implications of Curriculum Reform for School Buildings in Scotland*. *PEB Exchange, Programme on Educational Building*, 2008/05, Paris: OECD Publishing.

Temperman, J. (ed.) (2012). *The Lautsi case: multidisciplinary reflections on religious symbols in the public school classroom*. Leiden: Brill.

Tse, H.M., Learoyd-Smith, S., Stables, A. and Daniels, H. (2015). Continuity and conflict in school design: a case study from Building Schools for the Future. *Intelligent Buildings International*, 7:2-3, 64-82.

van Leeuwen, T. (2008). Space in Discourse. In Len Unsworth (ed), *Multimodal Semiotics* (pp. 34-49). Continuum, London, UK.

Vickers, L. (2011). Religious discrimination and Schools: the employment of teachers and public sector duty. In Hunter-Henin, M. (Ed) *Law, Religious freedoms and education in Europe*. (pp. 87-104) Farnham: Ashgate.

Vygotsky, L. (1978). *Mind in Society: the development of higher psychological processes*. Cambridge, mass.: Harvard.

Wertsch, J. 2009. *Vygotsky and the social formation of mind*. Cambridge, Mass: Harvard University Press.