

Mobile People, Mobile Law

Expanding Legal Relations in a Contracting World

2005

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13 School and Religious Difference: Current Negotiations within the Swiss Immigrant Society – Viewed in a Comparative Perspective¹

Joanna Pfaff-Czarnecka

All Western immigrant societies have long records of negotiations over the issue of religious freedom. This is especially the case with the human right to 'outer' religious freedom, that is the expression of one's faith, be it through ritual, dressing codes, habits, and codes of conduct, and that has long been subject to conflict and debate. Currently, there is a striking variety of exchanges resulting in differing kinds of agreements and compromises being reached that arise out of the migration of people and laws. The diversity of national and also municipal solutions in managing religious difference is certainly a forceful counter-argument against the homogenization thesis frequently put forward in current globalisation debates.

Differing patterns emerge as to how immigrant religions weave into the fabrics of their 'arrival societies'. In Canada and England, religious and cultural manifestations are considered to thrive in their differences (Kymlicka, 1995).² For instance in state schools, ethnic and religious manifestations tend to be stressed, and accommodation practices highlight the persisting strength of their boundaries (Schiffauer, 2002). The US and the Netherlands have adopted the approach of diversity management. In the former, debates address, among other things, the question how diversity can be used to further the society's success (Schuck, 2003), whereas in the Netherlands stress is placed on the mutual ability to reach compromises (Baumann and Sunier, 2002). In Middle-Europe, France and Switzerland have embarked on a rather different path, embracing republican ideals that seek to define national commonalities by criteria other than cultural elements (Benhabib, 2002; Pfaff-Czarnecka, 1998), and especially seeking to keep religious – be it 'own' or immigrant – manifestations out of the state-public

sphere. In Germany, where Christian religions have been accorded more space outside the private domain, prolonged societal conflicts regard the non-Christian religions – especially Islam's – access to spaces considered 'public'.

Given the enduring and diverse European preoccupations with immigrant religions (Zolberg and Long, 1999), it is not surprising that the European Community has been confronted with the question how the relation between religion, state and society is to be inscribed into the European Constitution. As a result, by and large the pre-existing national status quo arrangements have been left intact.³ Approaches to this issue are diverse, indeed, they embrace modes of separation between state and church (France), exclusive establishments (England) as well as the highly differing arrangements for states' public recognition of religions in the Netherlands, Germany, and Belgium (Casanova, 1994). The century-long negotiations between states, churches and other religious congregations have created distinct institutional arrangements that shape, as I intend to show, the current modes of dealing with immigrant religions in national or municipal contexts.

Some countries' practices are significantly better documented and discussed in academic and policy-oriented circles than others. Several immigrant societies endorsing the multiculturalism paradigm have been particularly well documented with regard to institutional arrangements highlighting diversity and/or difference. These include the front-runners in managing diversity; that is, Canada and the US, as well as the Netherlands and Great Britain in Europe.⁴ France as notoriously (in the multiculturalist perspective) non-accommodative has been widely and passionately discussed, but Switzerland and Germany, regarding their exchanges with immigrant religions, are less known. As Kälin suggests, one commonality among those three last-mentioned countries is their proneness to conflicts in accommodating immigrant religion in such public realms as state schools (2000, p. 142).

In this chapter, Switzerland will be the focus of inquiry. The aim is to describe the current state of affairs in dealing with immigrant religions,⁵ and to analyse it through comparisons with the most similar cases; that is, with Germany and France. Despite manifold similarities, the Swiss path towards realizing the human right to religious freedom reveals some interesting specificities that will best come to light through comparison. Notwithstanding the occurring and persisting potential for conflict, I intend to show that there is enough space within the Swiss arrangements for accommodating religious difference – even if the right to outer religious freedom has not yet been fully realized.

State or public (the terms are used synonymously) schools⁶ are an especially interesting site for observing negotiations over immigrant religions. For schools are central arenas, not to say 'battle grounds', where diverse social visions on morals, conduct and good life come to confront each other. From the authorities' point of view, schools educate pupils within recognized frameworks of values and norms, preparing them to become part

of their societies as independent, responsible and sociable human beings'.⁷ In Switzerland, especially, there is a strong value placed upon the concept of schools' integrative role for society's well-being.

From the point of view of pupils and their parents, schools may appear as spaces where knowledge and power, homogenization and hierarchic ordering, difference and essentialism are negotiated with sustainable results and consequences (Nökel, 2002, p. 131). Values and religious orientations may clash, and individual modes of living one's own religion may collide with schools' rules and regulations, disturbing – as authorities may claim – the orderly curricular course. Therefore, schools are arenas where it may be essential for pupils (and for those with parental authority) to seek room for manoeuvre when transmitted values and practices appear too oppressive. And, as Benhabib (2002) points out, schools can be instrumentalized as feasible grounds where pre-existing orders and recognized value systems may be contested.

Over the last decade or longer, Switzerland, Germany and France have experienced manifold situations where immigrant religions' manifestations at public schools have been contested and negotiated in most controversial manners. All three countries have had their big cases – *affaire foulard* in France, Fereshda Ludin's Muslim scarf case in Germany and the swimming-lessons ruling in Switzerland – deliberated in the seclusion of courts, and fiercely debated in mass media. These and other cases of dispensations and dressing codes will be discussed below.⁸

This chapter is not restricted to the analysis of court cases and mass media positioning, though. Court cases, normative considerations also communicated in mass media, laws, regulations and guidelines are just one side of the coin. On the other side are the everyday encounters where demotic discourses, practices and modes of conduct are shaped and re-shaped.⁹ Many successful solutions to accommodate immigrant religions in schools are created through direct negotiations and agreements between school authorities, individual teachers, parents and children. While reaching these solutions may not be possible without legal provisions guaranteeing the fundamental freedoms, there is room left for manoeuvre, resulting in diverse solutions.

The Swiss case will reveal this complexity by considering, first, the national legal provisions and, then, the actual practices – which mostly, but not always, conform to laws and regulations. In present negotiations, general principles mingle with endeavours to find practical ways of dealing with immediate problems. The approach taken here proposes a partial shift of perspective on accommodating immigrant religions in immigrant Western societies. Above all, I suggest that state-centred perspectives be complemented by inquiries into the multi-layered, fragmented, and partly contradictory character of contemporary civil society (Benhabib, 2002, p. 168). Acknowledging the complex nature of civil society negotiations and the multi-layered and differentiated character of its public spheres, it is crucial to grasp its role in

finding flexible solutions to accommodate immigrant religions very diverse and still diversifying social contexts.

School(s) and Religion(s) in Switzerland

Switzerland has had two cases occupying courts and instigating public imagery and debates on immigrant religions and their place in Swiss public schools. The first case considers the question whether a 12-year-old girl from a Turkish Islamic family could be excused from swimming lessons in a co-educational class (see also Kälin, 2000, pp. 160–163; Hangartner, 1994). This question has initially been answered negatively through the Zurich Cantonal Court's ruling that rejected the father's claim by maintaining that attending swimming lessons is an indispensable part of the educational course, while attending school is a civic duty. However, after the girl's father appealed to a higher authority, the Swiss Supreme Court granted exemption (BGE 119 Ia 178 on 18 June 1993), substantiating its ruling on the grounds that failure to attend swimming lessons would not seriously affect the girl's educational progress. The judges saw it as a minor failure in her performing civic duties.

The judges argued that the Swiss constitution, as well as the European Human Rights Convention, guaranteed religious freedom understood as an area of everybody's own responsibility in which the State must not interfere. Religious freedom, '(c)ombines the inner freedom to believe or not to believe, as well as the outer freedom – within particular limitations – to express, to practice and to spread around religious convictions' (translated by the author). The judges conceded that sports lessons are prescribed by law, and that religious convictions do not exempt pupils from performing civic duties such as attending school. They also stressed that the Swiss constitution substantiates the priority of state law before religious beliefs or the philosophy of any individual person.¹⁰

However, as the judges claimed, civic duties are not to be accorded *absolute* priority. Hence, an area of discretion was opened up. The question whether an orderly and efficient school course could be maintained, despite this exemption, was answered in the affirmative. The Supreme Court made also a point of considering the principle of gender equality, and did not see that it was endangered since the father promised to give the girl swimming lessons in private. The main reason for granting an exemption was identified in terms of assuring the child's well-being. For the judges wrote that they sought to avoid any conflict of conscience should the girl be torn in her loyalty between school and her parental home.

Several issues are of interest, here. One lies in the high degree of publicity this case has attained within the Swiss mass media. Also the nature of the conflict lines within the Swiss public sphere calls for consideration. The critics of the Supreme Court's verdict have taken to using cultural shortcuts:

their arguments equated this special provision with gender segregation as well as with female oppression. Additionally, the adherence to traditional norms (as displayed by the father of the girl) has been repeatedly depicted as fundamentalism. Most public voices have taken recourse to a widespread practice of *othering* a religious minority, equating tradition with 'lagging behind', and attributing a whole religious community a pejorative collective identity.¹¹

The very sharp tone of the judgment's critics and the possibility of voicing such oversimplifying and strong statements, devoid of any considerations of political correctness in public, is certainly an indicator of the very recent character of Swiss negotiations over immigrant religions. Leading Swiss intellectuals who have engaged in this debate have been able to publicly criticize *alien* religious forms as incompatible with their *own* country's morals and styles, postulating an unbridgeable cultural distance. That they have encountered little opposition in the media from other intellectuals and public figures must be seen as an indicator of a still widely spread Swiss self-perception of being a non-immigrant society.

That the Swiss public sphere, to dare a gross generalization, is not favourably inclined towards immigrant religions has also been shown by the example of the second Supreme Court's ruling regarding the question of whether a Muslim teacher was allowed to wear a scarf while teaching at a public school. The Supreme Court's ruling (BGE 123 I 296) prohibited a teacher who converted to Islam to wear a scarf, with the justification that all public displays of religious symbols are banned from Swiss public schools in order to maintain the religious neutrality prescribed by law in the Canton of Geneva where she was teaching. This hardly met any criticism in the press or in other places where public debates occur. As we shall see later, the German and French intellectuals are split on the perennial issue of the Muslim scarf in the respective national contexts, whereas in Switzerland there have been very few critical comments on this ruling, and where these exist they have been relatively mild in tone. The standpoint of most parents seems to be very much against teachers wearing Muslim scarves – whereas pupils wearing scarves have by and large been accepted.

On the other hand, the Supreme Court's decision in the case of swimming lessons is an indication that the Swiss authorities have embarked on considering solutions to realize the immigrants' religious freedom. It is obvious that this ruling suggests a compromise, an attempt by the judges to avoid as far as possible value conflicts between the school and the parental home (see, for comparison, the French practice narrated below). Attending school, that is prescribed by law for everybody for a nine-year period, is considered a civic duty in Switzerland. Hence, the ruling formulated by the judges, that the girl's not attending swimming lessons would mean no more than a minor failure in her performance of her civic duties, has special connotations in the Swiss context. Exemptions to this rule have been very few to date. Indeed, for many decades Jewish pupils were travelling from the

Canton of Zurich to the Canton of Lucerne in order to be exempted from attending lessons on Sabbath.

The judges' ruling interfered with the educational course of schools, confronting the authorities and teachers with the question of how to manage this and other dispensations. While both of the Supreme Court's rulings referred to above have captured public attention for very short moments (the public outcry after the swimming ruling ebbed away surprisingly fast), the everyday practices and especially negotiations over immigrant religions carried out in state schools have continued for several decades and have significantly increased in the last ten years as a consequence of religious pluralization brought about by migration.

Confronted with immigrant religions becoming more and more a fact of daily life, the Swiss educational authorities have embarked on designing principles for schools and teachers. Or, to be more precise, due to the Swiss federal organization, in the case of education (and in many other instances) it is never possible to make statements that would hold for the whole of the country, education being regulated by cantonal laws and regulations.¹² The following example from the Canton of Zurich can be considered as an indicator of trends in Swiss practices – that cannot entirely be generalized, however.

In 1989 and then anew in 2003, the Ministry of Education of the Canton of Zurich sent out a Letter (dated 6 September) to the authorities of all public schools in charge of formal education attended by the bulk of its population. In order to avoid uncertainties, principles had been formulated by a Commission formed within the Ministry. The guidelines stipulate the following:

- 1 *Dispensations on religious holidays:* On Ramadan and on the Feast of Sacrifice pupils could receive dispensation for three, respectively four days provided the parents expressed this wish orally or in writing.¹³
- 2 *Dispensations from swimming and sports lessons:* In principle pupils were to go through the entire school curriculum, but dispensations were possible, if attending sports lessons would lead to a pupil's severe conflict of conscience. Also, if parents so wished, the girls were to swim in light clothing. Since Muslim women are not to entirely bare their bodies in front of other persons, even if they are of the same sex, appropriate shower arrangements were to be met. In order to get dispensation from swimming lessons, parents were to apply to the school authorities. In the principles of 2003, the Ministry mentions the existence of the Supreme Court's ruling on dispensation from swimming lessons, strongly recommending dispensations to be granted generally, whenever asked for. In cases when school authorities deny dispensation, they were to justify their position in writing and to incorporate into the text the legal basis of their denial. The authorities make clear that the Supreme Court's ruling, though spoken in an individual case, has attained the character of a

precedent, creating a legal basis for the collective of those claiming the right to this dispensation on religious grounds.

- 3 *Dispensation from individual lessons and from particular learning units centring on the Christian faith:* Such dispensations were not to be granted. Regarding lessons containing Christian elements, teachers were asked to take religious feelings of children of other faiths under consideration. Also, other religions were to be incorporated into the curriculum. For, so the argument goes, coming to know world religions is a learning goal important for everybody. Dispensations from the teaching units on 'biblical history' were, however, declared possible.¹⁴
- 4 *Participation in school excursions:* The 2003 version drew attention to an agreement reached between the Ministry of Education and the Association of Islamic Organizations in Zurich. The latter asserts its support for Muslim pupils attending school excursions under the condition that the following guidelines were followed. In the first place conversations between teachers and parents were recommended, if necessary in the presence of 'cultural translators'. The parents should be informed that, from the fourth grade onward, yearly or half-yearly excursions are the norm in Swiss schools. There is no obligation to join in, but participation is strongly recommended because school excursions favour social integration, strengthen the community spirit in classes, enlarge the knowledge base (for example, in geography) as well as being good for health (sport and tracking weeks). A special recommendation was made that one female person should accompany any outing and that dietetic rules should be followed – if possible, adhering to vegetarian cooking or cooking without pork – and drawing attention to the fact that even poultry and veal sausages usually contain pork, and that many types of baked items have been cooked with pork fat.

Yet another document issued by the Ministry of Education, at the instigation of school authorities and teachers, is a compilation of religious holidays for the coming years of the following faith communities that prevail in the Canton of Zurich: Protestantism, Catholicism, the Greek Orthodox Church, Islam, Judaism, Serbian Orthodoxy, Tamil Hinduism¹⁵ and Tibetan Buddhism. This 'written help' ('*Handreichung*') contains addresses of all religious communities concerned that teachers can approach in order to acquire additional information. Reference is made to a new order of 31 March 1990 (§ 62) on absence from school, prescribing that pupils of all faiths can obtain dispensation on high religious holidays on religious grounds if the parents or guardians so wish (while the pupils are to do work to compensate).¹⁶ Additional regulations of 29 October 1991 regulate dispensations on religious events such as Sabbath, first communion and others.

That the Christian religion provides the script for calendar events is seen by the Ministry as self-evident.¹⁷ Historical reasons are given for the Christian faith's predominance in this area. In the Canton of Zurich the Protestant

calendar is followed. These strong historical foundations notwithstanding, changing practices are explained with the growing number of pupils of other confessions and seen as necessary. The regulations in the countries of origin form the base for dispensations in Zurich. The 'written help' suggests that various religious events provide a convenient occasion for tackling religions and their rites as topics during lessons.

It may seem strange to persons not acquainted with the Canton of Zurich that the Ministry's documents list special regulations for Catholics, whereas Protestants' codes and needs are taken for granted. Even more intriguing is that the Catholic 'specialties' are named along with those of immigrant religions and for a good reason: the Roman Catholic Church was only publicly recognized in the Canton of Zurich as late as 1963 – to the great relief of Italian and Spanish immigrants who have been gradually establishing themselves in the Canton permanently.

This short overview indicates that currently immigrant religion 'has access' to schools in the Canton of Zurich, and this finding holds for most of Switzerland. The Ministry's guidelines and the Supreme Court's rulings have been elaborated in reaction to the growing number of pupils of non-Christian religions. Still, as almost everything else in Switzerland, religion is dealt with discretely. Whoever brings his or her religion from home will not be impeded from performing it in continuity with parental practices but again it is sought to avoid overt manifestations.

The care to guarantee religious freedom at schools is matched by practical considerations of how to enable smooth schools' running. Religion, whether Christian or of any other denomination, is by no means banned from schools, but a low profile is maintained. The authorities suggest flexibility in order to rule out discrimination, on the one hand, and to make the schools run smoothly on the other. Flexibility is especially meant to *discourage* conflictive value debates *over principles*. It may sound paradoxical that addressing the immigrant religions' needs in the Swiss public schools' everyday dealings has precisely the function of keeping religious issues out of the public agenda. For, as the French example will show, under the current globalised attention towards ethnicity and faith, banning religious expressions from schools may provide fertile ground for identity politics.

Compared to the public outcry over the Supreme Court's swimming lessons ruling, it is rather intriguing how accommodating the Ministry's guidelines are to immigrant faiths. Already four years before the Supreme Court's swimming ruling, the Ministry was suggesting dispensation from swimming lessons for Muslim girls. Driven by the experience that matters are more easily settled when the persons directly concerned enter in communication, the authorities have embarked upon the strategy not to advertise their relaxed position on issues that are *hot* when brought to the attention of the general public through the mass media.

Given the Ministry's open-mindedness with regards to religious freedom, the question arises why a parent felt compelled to take the swimming lessons

case to court. This step was necessary indicates that there has not been and does not exist a general consensus on how to deal with immigrant religions at Swiss schools. Among the school authorities and teachers there is great variety in individual opinions regarding the place of religion in their realm. As conversations reveal, individual school authorities, teachers and parents differ significantly in their opinions, their interest to collaborate and to accommodate, and in the space they give to compromising.

Some teachers are much more open to special regulations than others and some are more open and accommodating vis-à-vis other religions than others. Accordingly, pupils' experiences vary to a large extent. One of them relates that a teacher suggested that she use the teacher's cabin for a shower, without her asking for this kind of help, whereas another young woman records her teacher's aggression at her alien (Muslim) religion, despite the fact that she was entirely secularized. Teachers' knowledge and interest in foreign religions and in religion in general also varies, and so does their readiness to spend time discussing children's participation in schools' outings with reluctant parents. Immigrant children and their parents also have different attitudes – which do not come as a surprise. Even though most of them indicate a fair deal of satisfaction that elements of their religions, like the festivities, have been acknowledged, dispensations are not frequently asked for, except for Ramadan. Similarly, pupils and teachers rarely come across somebody actually asking for a dispensation from sports or swimming lessons. But the mere option to do so is welcomed by many parents and pupils. The satisfaction that pupils and parents express with regard to their schools' and teachers' standing on religious matters also varies.

In many important respects, findings from Germany are similar to Swiss practices. However, some striking differences should become apparent in the following section.

School(s) and Religion(s) in Germany

In a recent comparative study on the Turkish immigrants' integration in four European countries, the chapter on religion makes out significant differences between the four political cultures of Germany, France, the Netherlands and Great Britain. With regards to the German praxis, Sabine Mannitz (2002, pp. 134–135) observes that school authorities consider it crucial for pupils to grow up in their own religious traditions in order to develop social ethics of responsibility – considered as rooted in religion. The authorities consider religious education, established as a right in the German Constitution, a central element underlying the formation of cultural identity, prescribing religious lessons as an 'ordinary' element of curricula in public schools and allowing for prayer. The responsibility to God as a common moral basis of the German nation is stated in the preamble of the Constitution.

Against the strong value placed upon religious underpinnings of an individual's identity and morals, the big German legal case regarding the question whether a teacher is to be allowed to wear a Muslim scarf has partly different connotations than in Switzerland. At the time of writing this chapter, the German Constitutional Court (*Bundesverfassungsgericht*) was considering Fereshda Ludin's claim to be allowed to wear a Muslim scarf while teaching in a public school. This case had been on public agendas for several years, after it was dealt with at lower instances, repeatedly causing heated public debates. Providing a role-model as teacher, so the argument ran, she was carrying a faith conflict into class.¹⁸ Since 1999 Ms. Ludin has taught in the private Muslim school in Berlin-Kreuzberg, still striving to obtain permission to teach in Baden-Württemberg where she claims to be rooted.

This case has been fiercely debated in mass media. On the one hand, individual conscience and religious freedom were put forward as an argument in favour of her claim. Defendants of Ludin's position have depicted her as an open Muslim woman who has been able to demonstrate to pupils that persons wearing a scarf do not live on another planet (*Tageszeitung* from 3 August 1998, p. 14). On the other hand, the renowned feminist Alice Schwarzer argued against Ms. Ludin's cause in *Der Spiegel* (2003 (23) pp. 89–90). She substantiated her position by claiming that Ms. Ludin was a much more orthodox believer than she was ready to acknowledge in public, for she had continuously depicted Western women as spoilt (*verdorben*) and was not ready to shake hands with a man.

The German debate on Ludin's case is significantly more complex and will probably remain so in future. For, on 24 September 2003 the German Constitutional Court ruled that under the current law she can wear the scarf because there is no legal base to forbid it. However, it also suggested that German states should seek to find an acceptable balance between religious freedom and neutrality at schools in their legislation. This ruling considered, Ludin's initial victory may easily turn into Pyrrhic victory. For several German states (notably Baden-Württemberg, Bavaria and Saarland) immediately embarked on drafting legislation to rule out the Muslim scarf at state schools or even generally in public offices (*Frankfurter Allgemeine Zeitung* (FAZ) 1 October 2003, p. 2). For reasons discussed above (state's neutrality vis-à-vis all religions), this position could not be taken in Switzerland. On the other hand, the state of Rheinland-Pfalz already decided that no legislation against the headscarf in schools will be considered. It is also significant that the very wide media coverage in the aftermath of the ruling revealed a far-reaching discretion exercised by schools conforming to the Swiss pattern. For instance outside the public scrutiny, in North-Rhine-Westphalia, fifteen teachers wearing scarves already work at state schools (FAZ, 25 September 2003).

Both Switzerland and Germany reveal similar experiences regarding the acceptance of Christian crosses on school premises. Both countries have had their '*Kruzifix-Urteile*' (rulings on the issue of crucifixes) with practically the

same content: as religious symbols they are to be removed from classrooms and corridors, which are considered public space. However, in both countries, regions with strong Roman Catholic orientations have severely objected to this ruling. In German Bavaria a compromise has been reached, by a ruling that the crucifix is to be removed if somebody objected to its presence.¹⁹

Religion as lying at the very root of an individual's conscience appears in German schools at various occasions. The dispensation practice from lessons, not only from sports lessons, is one case in point. Parents at the Lise-Maitner-Gymnasium in Berlin (Mannitz, 2002, p. 117) have repeatedly asked the school's authorities for permission for their daughters' dispensation from swimming lessons. These applications are not granted as a rule since – as in Switzerland – the schools are to make sure that the duty to attend school curricula is followed. Whereas the Swiss Supreme Court's swimming ruling is widely considered as a precedent, German school authorities precisely seek to prevent this mode of interpretation. In various parts of Germany, courts have been repeatedly confronted with claims by Muslim parents, each case considered anew, with the individual position deciding the case.

Also local educational authorities, the next possible instance, usually decline an exemption so that Administrative Courts are approached. According to Mannitz, every ruling is based upon an examination as to whether a personal moral dilemma can be detected which would allow for an exemption. A thorough examination is conducted in order to establish whether the girl has followed the dressing code, her regular attendance of high religious festivities and her fasting. An examination of conscience (soul-searching) is conducted to weigh a particular moral-religious standpoint against general principles binding for everybody.

In Berlin's Lise-Maitner-Gymnasium no excursions or outings are organized. Mannitz' guess (personal communication) is that, expecting parents' opposition, the teachers do not even try to organize such events. Notorious (among the critical commentators on Islam) is the 'camel fatwa' ruling that after puberty a woman is not to travel more than 81 km without an accompanying person to look after decency. *Der Spiegel* (2003 (40)) records a court case in Münster, however, where the Head Administrative Court ruled for a dispensation for a girl in 10th grade from a school excursion. Again, in Switzerland going to the court would not be necessary.

A bone of contention in German schools from the point of view of immigrant religions is the Islamic organizations' inability (not obtaining permission) to conduct religious lessons. Until today Islamic education has only very sporadically been possible. As in the case of Christian and humanist education, the Islamic curricula are under the scrutiny of state authorities. In order to obtain permission to conduct religious education an organization has to gain recognition as an organization under public law (which is not necessary in Switzerland in order to run religious schools or lessons), to accept the state's supervision, must not partake in political activities and act in conformity with the Constitutional provisions as well as establish a durable

organizational structure. So far, most Islamic organizations – many of them reluctant to allow for state interference – have failed to obtain permission to teach their religion.

In comparison with Switzerland, Germany accords more space to religion. There is no constitutional provision for maintaining schools' neutrality in religious matters. The inherent ideal, so Mannitz (2002, p. 113), suggests aims at a religion that cooperates responsibly with the state. The institutional pattern is pre-formed by the German Churches' loyalty vis-à-vis the democratic ideal that is reciprocated in the privilege to conduct religious lessons within state schools – these are, however, non-compulsory. In view of German federalism, it is as difficult to make general statements as it is in the case of Switzerland. Nevertheless a tendency can be discerned with German states seeming to back their Christian religious tradition, while acknowledging the existence of others. An ambivalent position obtains where on the one hand religiousness, as expressed in different faiths, is endorsed as underlying the development of moral codes of conduct, whereas on the other hand – at least in some states – religions are not treated on an equal footing. In these respects the French experiences differ significantly.

France

The French version of secularism bans religion from state and public institutions, including the school system. Contrary to Switzerland and Germany, where cultural continuity between pupils' home and the school is maintained and supported by school authorities, the French public school, so Schiffauer (2002) observes, is conceptualized as a space where an individual's education is separated from his or her origins. This separation is even considered to be a chance for the up-and-coming members of society to leave behind their religious and cultural education they have received at home, entering the classroom as free individuals, unimpeded by customs or cultural allegiances. Religion is confined to the private realm of family life, while the French notion of freedom entails also freedom from religion in the public space (Mannitz, 2002, p. 134). The role of religion and religions in the development of civilization belongs to the past, so runs the authorities' argument, while the present endorses rationality upon which the republican version of national unity is based. While Switzerland and Germany acknowledge the Christian foundations of much of their societies' institutional practices and morals, the French state insists upon its neutrality towards religion.

Attending a public school in France renders strict adherence to religious practices impossible. The rulings on religious issues are clear-cut, but practice reveals inconsistencies and areas of discretion. Pupils – there is no question about the teachers – are not to display their religious allegiance through signs such as the Muslim scarf. Crucifixes are banned. No dispensation from particular lessons – such as sport – is allowed: the regular

school course is given a priority over a pupil's religious freedom (Kälin, 2000, p. 155); all girls are to attend swimming lessons so that school's order is maintained. Dispensation on high religious holidays is possible, though, according to Conseil d'Etat rulings, even if it is severely weighed against the necessity to maintain an orderly course of schools (Kälin, 2000, p. 159). Religious education has given way to *Education civique*, but an educational course of the *faits religieux*, is currently being considered.

While no space is allotted to religion in public schools, public debates over religious issues in relation to schools abound in France. The open letter to the Prime Minister published in the *Nouvel Observateur* (2 November 1989) signed by Régis Debray, Elisabeth Badinter, Alain Finkielkraut, Elisabeth de Fontenay and Catherine Kintzler is well known. They stress the necessity of a continuous struggle in order to maintain the principle of laicism, the public school, the republic and freedom itself. School is to provide a ground, so the authors claim, where one can forget one's community of origin. Only when not having to think where one comes from, can the pupil learn to think independently. In this rather extreme challenging figure the argument goes that if the school is to remain a place of emancipation, pupils' cultural origins must not attain priority.

The ban of pupils' Muslim scarves from French schools is fairly recent. Until the mid-1990s, there were cases of girls wearing scarves in schools. This issue started receiving public attention in 1989 after three girls wearing scarves (and declining to put them away) were relegated from school in Creil. As in Germany, the public attention this case has received has been very heterogeneous, crosscutting political allegiances and intellectual circles. The reactions have caused the Ministry of Education to formulate its position. As Benhabib (2002) claims, the solution the French Supreme Court proposed in the year 1989 (27 November) reads extremely ambiguously. The judgment attempted to balance the principles of *laïcité* (secularity) and freedom of religion and conscience. However, in a different manner from Germany, the individual student's beliefs were not considered the basis for the judgments but rather, the court left the proper interpretation of the meaning of these signs to the judgment of school authorities (*ibid.*).

The ambiguous nature of this judgment did not calm down the controversy. Under the persisting pressures of protest and public criticism the Minister of Education François Bayrou declared on 10 September 1994 that students had the right to wear discrete religious symbols, but that the veil was not among them (Benhabib, 2002, p. 99). Upon this ruling, teachers endorsing the laicist principle expressed relief that a clear-cut regulation existed. The apex of this conflict was reached after President Chirac established legislation in November 2003 against wearing religious signs at schools, this time including the yarmulke. This new article was confirmed by the National Assembly on 19 February 2004 and confirmed by the Senate on 3 March.

There is a lot of irony in the fact that France, eager to rule out religious manifestations from the public domain, has encountered such a thorough and

enduring debate on these issues. Against this background, the Swiss and German authorities' quest to avoid publicity may be better grasped. Benhabib's analysis reveals yet another fascinating aspect of the French *affaire foulard* that the debating audiences are unable, but also probably unwilling to recognize. It is the complexity of meanings when religious symbols nowadays come to be used in secular public spheres. It is best captured in the following quotation from Gaspard and Khosrokhavar (1995, pp. 44-45) who, after the *affaire foulard* started, conducted a large number of interviews with Muslim women and girls (in Benhabib's translation):

(The veil) mirrors in the eyes of the parents and the grandparents the illusion of continuity whereas it is a factor of discontinuity; it makes possible the transition to otherness (modernity), under the pretext of identity (tradition); it creates the sentiment of identity with the society of origin whereas its meaning is inscribed within the dynamic relations with the receiving society ... it is the vehicle of the passage to modernity within a promiscuity which confounds traditional distinctions, of an access to the public sphere which was forbidden to traditional women as a space of action and the constitution of individual autonomy.

Religion(s) in Swiss, French and German School(s): Diversity and Convergences

Significant convergences in all three immigrant societies come to light: in Switzerland, in France and in Germany religious freedom is guaranteed by law not only for each country's citizens, but for all persons living in a state's territory. Anti-discrimination laws have been established and refined, and the public recognition of immigrant religions is increasingly on the political agendas. Parents, children and teachers can claim the right to religious freedom with regard to inner beliefs and religious practices (Kälin, 2000, p. 164), and there are rules and regulations to prevent the enforcement of religious assimilation. Religious minorities are also protected via dispensations against what Kälin (ibid.) calls indirect discrimination, that is, situations when seemingly neutral provisions (public holidays according to the Christian calendar) discriminate against the minorities. However, there are significant variations among these three countries.

The notion of state's neutrality vis-à-vis religion at schools differs in France, Germany and Switzerland. In France, with its pronounced separation between state and church, the *laïcité* principle prevails, dictating that the teachings' contents must be neutral and so must be the teachers' comportment; state's neutrality is interpreted in such a way that no religious elements are to enter the classroom. In Switzerland, neutrality is defined not merely in negative terms, (that is in the sense of state's non-interference), but also positively in the sense of equal treatment of all religions. In Germany, religious neutrality in the educational realm has not been inscribed into the German Constitution. Also, Germany differs from Switzerland with regard to

the possibility of establishing public schools with a faith basis (Kälin, 2000, p. 144), the former allowing for such a practice.

Both, the Swiss and the German cases regarding the Muslim scarf have revealed an ambiguity in perception of schools as public terrains. Pupils are allowed to wear scarves at schools while teachers are not. The Swiss position is substantiated in the teacher's elevated position as a public figure, state's representative and a possible role model, while pupils are treated as private persons, which makes it possible for a pupil to wear a Muslim scarf in a Swiss classroom. The Swiss and German schools can be conceived of as spaces where state and private actors meet with their partly conflicting orientations and interests, with the public/private divide being negotiated within the school realm. This view is not endorsed within the French system that draws the line demarcating public space in front of the classroom door.

Switzerland, Germany and France are countries where a majority of children attend public schools. In the case of immigrant religions, private religious schools would be an *exit option* insofar as deeply religious pupils (or pupils of deeply religious parents) would not be confronted with values and practices conflicting with those they wish to follow according to their faith. The existence of private religious schools could also, potentially, take some of the pressure off public schools to accommodate immigrant religions.²⁰ However, with the exception of Jewish schools, very few private schools exist in these three countries that would not be run by Christian congregations. In Germany, there is one Muslim school in Berlin, in Switzerland one Muslim school in Geneva, and in France I was able to trace²¹ one Muslim school on La Réunion Island and one newly established school in Lille (Lycée Averoes).

In all three countries, legal bases for establishing private religious schools exist. However, the more orthodox groups that would have a higher stake in seeking exit options to public schools are severely scrutinized by the authorities requiring that standards of tolerance and respect to fundamental freedoms be met. In Switzerland private religious schools are allowed (Kälin, 2000, p. 172) if the cantonal educational standards, rules and regulations are followed. Unlike Germany, public recognition of a congregation is not a precondition for establishing a religious school. In Germany, the Constitution explicitly establishes the right to fund private schools (Art. 7, 4 - Kälin, 2000, p. 173). These schools must be accredited by local educational authorities, and their statutes must confirm to the Constitution.

In France, laws from the late nineteenth century stipulate the freedom to educate privately and there exists yet another exit option. A pupil can obtain dispensation from attending school and to learn at home, with a duty to report to school inspectors regarding an adequate course of education. Salzbrunn (personal communication) recounts the very successful case of a Muslim woman who has not only managed to pass her baccalaureate in a long-distance learning course at home, but also to achieve university entry to study medicine with remarkably high marks.

Distinct from France where the accommodative practices at schools are rather well scrutinized by the mass media, German and especially Swiss schools are significantly more accommodating to immigrant religions than is publicly acknowledged, or (to be more precise) than is acknowledged in the mass media, while local public spheres are usually well aware of the substantial amount of negotiation and the resulting changes continuously taking place in schools' everyday practice. In the context of the Canton of Zurich, especially, negotiations on religious issues are not only confined to individual encounters, but often involve various persons and agencies seeking for mutual accommodations, and often compromises.

A first conclusion is therefore that the three countries differ significantly in state law and policies as well as in public attitudes. These differences are not only visible in diverse trajectories leading to specific institutional constellations, but also in their responses to the emerging religious diversity in their vicinity. In particular, the Swiss case reveals that, with given laws and regulations, room for manoeuvre emerges with regard to negotiation and the finding of suitable solutions for solving practical problems. Both the Swiss and the German examples indicate that attitudes towards immigrant religions at schools differ significantly between local contexts. While conflict situations and growing rigidities are most often recorded in the media and occupy the courts, the number of successful negotiations and compromises may be much more significant than is usually publicly recognized and acknowledged. (Though discriminatory practices are often hidden from the public scrutiny as well.)

The second conclusion results from the previous one. Managing religion and managing religious diversity appears to be a continuous process of readjustments and rearrangements. No definitive solutions as how to realize the human right of religious freedom are possible, because new circumstances require institutional change. Even this short overview of laws and practices in state schools in three European countries reveals that not only societies with a strong orientation towards multiculturalism and/or diversity need to (and do) undergo continuous institutional readjustment processes. Also in countries with a republican orientation and largely non-accommodative attitudes towards religion (not only immigrant religion) as in France and Switzerland, is the embattled public-private divide shifting with regards to the immigrant religions, currently in Switzerland though more so than in France.

The above analysis suggests a strong path dependency, resulting in diverse national trajectories towards accommodating religious difference at state schools. More research is needed in order to assess the importance of migration patterns for bringing institutional changes about. Such factors as temporal differences, circumstances and pace of immigration certainly play an important role in affecting the incorporation of immigrant religions. Yet another issue requires more consideration. The findings of this chapter conform to a current trend in research on immigrant religions that sees the past and present state-church relations as the major factor explaining

differences in accommodating religious diversity accompanying migration (Champion, 1999; Soper and Fetzer, 2003; König, 2003; Pfaff-Czarnecka, 2002).²² The French non-accommodative pattern towards immigrant religions is the outcome of the nineteenth century process towards the secular in the state-public realm. On the other hand, the German tradition of faith-based schools being continued into the twentieth century goes back to the prominent role of Protestant and Catholic churches in the German integration process from the mid-nineteenth century onwards and their role in erecting a supra-regional German educational system. As a consequence, faith-based education became an intrinsic element in public school curricula all over Germany.

The Swiss trajectory conforms in important respects to the French path towards secularization, but is also the outcome of the prolonged conflicts between Catholics and Protestants. The Swiss *Kulturkampf* produced different effects on the educational realm from the case in Germany. Switzerland has been almost equally divided for centuries between a Catholic and Protestant population (with some 4 per cent numerical dominance by the latter), with a strict separation of territories along denominational lines. In the course of the nineteenth century, far-reaching institutional reforms took place to secularize the polity, to establish the secular state in charge of such crucial societal domains as marriage, burials, jurisdiction and education as well as to constitutionally lay down the state's prerogatives and *duty to maintain religious freedom*. According to Späni (1999), secularization of the educational system cannot merely be seen as the outcome of secularization endeavours in the state-public domain. Rather, secularization of schools has been one of the crucial sites where these processes have been initiated and won by liberal forces.

The negotiations of the late nineteenth century are of crucial importance today vis-à-vis the immigrant religions. As we have seen above, in the Protestant Canton of Zurich, public recognition of the Catholic faith has provided an avenue for incorporating the specificities of non-Christian religions, as is evident in the case of dispensations. Furthermore, in the quest to effect religious freedom between the Christian denominations, all state schools in Switzerland are to follow religious neutrality – which provides space for equal treatment (at least in theory) of the immigrant religions as well.

Hence, the past and present state-church relations are the major factor, explaining differences in accommodating religious diversity brought about by the migrants, with the Swiss case revealing yet another twist to this argumentative thrust. For it may be inferred from the Swiss case (although we need more research), that in countries where there have been centuries-long conflicts among various Christian faiths, the current institutional patterns are not only the outcome of state-church relations, but also of measures taken to accommodate the conflicting Christian religions in the given country's institutional settings. In Switzerland, the state's neutrality and impartiality

towards religions – such as in schools – is in the first place the outcome of the nineteenth century's negotiations to achieve peace between the Catholics and the Protestants. We may expect that the immigrants' religions will eventually be treated at Swiss schools (and in other societal realms) in the same way as those of the Christian brethren who were migrating into the Catholic or Protestant cantons within their own country.

But will that be enough? Are we not currently witnessing a significant boundary shift towards religion's gaining (more) public ground as a consequence of the prolonged negotiations over religious freedom in Western immigrant societies?

Notes

- 1 Thanks for comments on this paper to K. von Benda-Beckmann; for expert interviews to M. Truninger, H. Hattipoglu, H. Rudolf, C. Allemann-Ghionda, G. Rosenthal, J. Picard; for additional information on Germany to S. Mannitz and on Switzerland to M. Späni; for information from France to M. Salzbrunn.
- 2 Although the Canadian authorities seem to be currently shifting from the 'politics of recognition' discourse to a 'diversity-and-convergence' approach.
- 3 Article 51 of the draft EU-Constitution states: 'The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member states'.
- 4 For England, see Poulter (1989), Baumann and Sunier (2002), Parekh (2001), Vertovec (2003), and Werbner (2002); for the Netherlands, see e.g. Rath et al. (2001).
- 5 Leaving the Jewish population (that until recently has kept a very low profile) aside, the century-long Swiss preoccupations with religious difference have mainly centred on the Catholic-Protestant divide. After the Second World War, South European 'guest workers' started to come to Switzerland to settle permanently, and it is only over the last decades, with Tibetan, Cambodian and Tamil, Turkish, (Ex-)Yugoslavian and Middle Eastern refugees and immigrants that foreign religions have crossed the Swiss borders.
- 6 That is state-funded schools.
- 7 Article 1 of the public school law in the Canton of Zurich.
- 8 School curricula and school books cannot be considered here, for space reasons.
- 9 See Benhabib's unitary-vs.-pluralist model of public sphere (2002, p. 138).
- 10 See Art. 49, para 5 of the old Swiss Constitution (1874-1999): 'Die Glaubensansichten entbinden nicht von der Erfüllung der bürgerlichen Pflichten'.
- 11 In Swiss debates, the Muslims are still often depicted as *one* minority.
- 12 The same holds for regulating the relationship between the State and the Church: the majority of Swiss Cantons have resorted to the means of public recognition of both 'own' Christian Churches, except for the Cantons of Geneva (see the scarf case) and Neuchâtel where strict division between state and religion has been established, with the Private Law regulating the affairs of religious communities.
- 13 According to Kälin (2000, p. 157), earlier Swiss practices were significantly more restrictive. So a Supreme Court's ruling of 1940 maintained that the Cantons were not obliged to dispense Adventists from attending schools on Saturdays. The Supreme Court's ruling 117 Ia 311 has, however, created a basis for dispensations on religious grounds (Kälin, 2000, p. 157-158).
- 14 See *Volksschulgesetz*, article 26.
- 15 In the case of Hindu girls, it is recommended to school authorities to grant 1-2 weeks dispensation upon their first menstruation if such a wish is expressed by the parents.

- 16 Children who fast during Ramadan are not to attend sports and cooking lessons, but to be occupied in different ways.
- 17 In general, in Switzerland it is acknowledged that Christian principles continue to provide an important foundation for thought and action, even if in a historic cultural rather than a religious sense (Kälin 2000, pp. 143-144); in multicultural Canada such insights are currently discouraged (Bramada, personal communication).
- 18 This frequently repeated argument, also in Switzerland, was not substantiated by empirical evidence, however.
- 19 However, Salzbrunn (1999) relates to a case in the village of Bruckmühl where a girl whose parents objected to the crucifix in class, was confronted with her teacher wearing a cross of 18 centimetres in size.
- 20 In the context of the US, Schuck argues that private religious schools may play a substantial role in socializing marginalized groups (Schuck, 2003, p. 297) – an issue that I cannot deal with here.
- 21 Thanks to M. Salzbrunn's research.
- 22 'The concrete forms of religious pluralism in different European countries have been, and still are, bound up with their respective religious traditions. The latter's socio-religious content, organisational forms and processes of integration into the nation-state have resulted in different types of pluralism' (Champion, 1999).

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14 Localizing the Global: Rights of Participation in the Scottish Children's Hearings System

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The ability of young people to participate in the events and issues that make up their lives is one of the most significant themes of the United Nations Convention on the Rights of the Child (UNCRC). Given the speed of the UNCRC's adoption by states (within seven years every country except Somalia and the US has ratified it)¹ it might be considered the most globalized and transnational law on Earth. Yet, because of its substantive subject matter, dealing with the lives of children and families, the abstract rules of law are given life by the local contexts in which they are negotiated. In this chapter we explore the 'glocalization' of the meaning of one aspect of participation in the UNCRC, in particular Article 12 that is one of the most significant provisions in the Convention. It states in pertinent part:

- 1 States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child ...
- 2 For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child.

Our chapter focuses on children's perspectives as they manoeuvre their way, in the light of local facts and knowledge, through the legal landscape of the children's hearings system in Glasgow. Their views and experiences are contrasted with those of the institutions and personnel who exercise authority over them, especially panel members who run the hearings. The data which features in this chapter derives from a study which was conducted between 1997 and 2000 that included the observation of hearings and interviews with personnel, young people and parents.² It is supplemented by three scenarios that we put to 50 young people we interviewed who had some experience of the system and who were therefore in a good position to provide insight into