

Christmas, Crescents, and Crosses: When Is Symbolic Religious Establishment Permissible?

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Abstract: Symbolic religious establishment (SRE), that is, the noncoercive recognition of religion by the state, has become the object of a growing debate in political philosophy. Although SRE is purely symbolic, some have argued that it can be wrong because of the message of political inequality that it sends. The indeterminacy of this expressive argument makes its application problematic, however. The objective of this article is to improve the applicability of the expressivist argument by providing clear guidelines of evaluation of SRE. I develop a three-step test that helps distinguish permissible from impermissible cases of SRE: religious symbols that are divisive, political, and not appropriately justified are impermissible because of their exclusionary message. One important upshot of the argument is that the appeal to the value of heritage does not provide a plausible justification for the introduction of new religious symbols, and therefore that such neo-establishment is always impermissible.

Since June 2018, in Bavaria, there must be a well-visible, wall-mounted cross displayed in the entrance of all public buildings, as the “expression of the historical and cultural influence of Bavaria.”¹ This is the so-called *Kreuzpflicht*. Markus Söder, the minister president of Bavaria who introduced the decision, argued that this cross is not a religious sign but “a fundamental symbol of our Bavarian way of life” (Bennhold 2018) and therefore not in violation of the principle of state neutrality toward religion guaranteed by the German Basic Law.²

The Bavarian *Kreuzpflicht* sparked a heated controversy about religion and secularism in Germany. The public display of crosses, supporters claim, does not challenge the religious freedom of individuals. It does not make anyone less free and does not demand anything

of anyone. Those who are members of religious minorities and those who are nonreligious are not treated any differently, they have not lost any right, and the cross does not impose any actual burden on them. Opponents of the decision, on the other hand, emphasize the symbolic dimension of the *Kreuzpflicht*. The decision for a state to exhibit a particular religious identity might not be a violation of equal treatment or religious freedom, but it does send a problematic message, suggesting that those who are not Christians are not true Bavarians.

Is the *Kreuzpflicht* a permissible decision in a liberal state? Is this kind of purely symbolic religious establishment problematic? And if so, why? The problem with symbols is that they are not self-explanatory. They need to be interpreted. This task is a profoundly contextual exercise; the same symbol will convey different

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¹*Allgemeine Geschäftsordnung für die Behörden des Freistaates Bayern* (General Rules of Procedure for the Authorities of the Free State of Bavaria), Part 4, Article 28, “Anbringen von Kreuzen in Dienstgebäuden.”

²The German Basic Law states that “freedom of faith and of conscience, and freedom to profess a religious or philosophical creed, shall be inviolable” (Art 4.1). In a 1965 decision, the Federal Constitutional Court interpreted the German Basic Law as entailing a principle of state neutrality toward religion (Bundesverfassungsgericht 19, 206).

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meanings in different societies or at different times. Does this mean that there can be no general rules regarding how symbols should be interpreted, and what makes them problematic?

In this article, I argue that symbolic religious establishment (SRE) is problematic in some cases and that there are generally applicable guidelines that should be used to distinguish permissible from impermissible cases. I first define SRE and clarify how it is distinct from other forms of religious establishment. I then examine and defend the expressive harm argument: SRE is wrong whenever it sends a message of political exclusion. But how can we know whether a religious symbol is sending a message of political exclusion? The weakness of the expressive harm argument is its indeterminacy, as it relies on contested interpretations of symbols. I turn to this problem in the third section of the article. I design a three-step test that can be used to evaluate when a religious symbol should be reasonably interpreted as sending a message of symbolic political exclusion. This test makes the expressive argument much less indeterminate by specifying the questions we should be asking to assess religious symbols. It therefore provides clear guidelines that can be applied to actual cases of SRE and that can be used to determine which religious symbols are impermissible.

What Is Symbolic Religious Establishment?

What does liberal political philosophy say about church–state separation and religious establishment? Is religious establishment permissible, and, if so, under which conditions? A debate in political and legal philosophy has recently emerged to examine such issues (Ahdar and Leigh 2005; Audi 2011; Bader 2007; Bonotti 2012; Brudney 2005; Dworkin 2006; Laborde 2013; Maclure and Taylor 2011; May 2012; Seglow 2017). All agree that an important distinction should be made between illiberal and liberal forms of religious establishment.

Illiberal forms of religious establishment are those that do not guarantee an adequate protection of religious freedom, which is a violation of liberal basic norms. All individuals should have the right to choose their religion, to change their religion, or to have no religion at all. A liberal state cannot make any particular religion illegal or impose the truth of any religious doctrine. Illiberal forms of religious establishment must be rejected.

Liberal forms of religious establishment, on the other hand, pass the bar for liberal legitimacy and guar-

antee an adequate protection of religious freedom. Such religious establishment has been called weak or moderate establishment (Modood 2007, 2010; Seglow 2017). It is a noncoercive form of religious establishment: It does not limit religious freedom and does not impose any kind of constraint on anyone.

In some cases, this moderate establishment gives special rights or benefits to the adherents of the established religion, including, for instance, providing financial support to the established religion,³ allowing religious instruction in public schools,⁴ or granting political or legal powers to religious authorities.⁵ Such preferential treatment does not “substantially impinge upon the lives of secular citizens and those who follow non-established faiths” (Seglow 2017, 193), but it might be argued that it is in violation of equal treatment.⁶

The kind of religious establishment that I am interested in might be understood as a type of moderate religious establishment: It is liberal and noncoercive, but it does not entail giving any special rights or benefits to the established religion or its adherents. It publicly and symbolically supports a particular religion, but it does so without having any actual effect on how it treats individuals or religious groups. This is symbolic religious establishment (Lægaard 2017). It refers specifically to the public display of religious symbols and to the endorsement by a state or political entity of any kind of religious heritage.⁷ Religious symbols are cases of SRE whenever their display or use results from a decision of public authorities, or when their display is found in a space that belongs to public authorities and has therefore been authorized by them, even if the symbols are actually

³The use of public money to support a particular religion can be seen as a case of secondary coercion. On the distinction between primary and secondary forms of coercion, see Audi (2000, 88).

⁴Religious instruction in public school is only a measure of moderate religious establishment if it is not mandatory. Imposing religious instruction in public schools would be a measure of illiberal religious establishment.

⁵This is the case, for instance, with religious establishment in the United Kingdom, where seats are reserved in the House of Lords for church representatives. For a list of the most common measures of moderate religious establishment, see Seglow (2017, 190–91).

⁶One could respond that this can be avoided by granting equal recognition to religious minorities (Modood 2010). This form of multiple religious establishment is, however, problematic. First, it supposes that we are able to clearly identify the different religious groups in a society, which is a controversial task. Second, although different religious groups can be granted similar support and recognition, it is difficult to imagine how the same support and recognition could be granted to the nonreligious groups.

⁷I am using *state* to refer to any political entity that would have authority regarding symbolic expression. The word *state* in this article, therefore, does not refer exclusively to sovereign states.

introduced by private agents.⁸ In SRE, the established religion is not the object of preferential treatment, as in other cases of moderate religious establishment, but rather the object of preferential expression. Religious establishment is purely symbolic in the sense that it does not involve any form of distributive injustice (Lægaard 2017, 118) and is therefore compatible with equal treatment. If anything is wrong with symbolic religious establishment, it is not because of how it treats people but rather because of the message that it sends. The Bavarian case mentioned earlier is a paradigmatic example of SRE.

SRE is a very broad category that includes many different kinds of symbols. Three subcategories can be distinguished.

In the first group, SRE takes the form of a purely symbolically established church. To the extent that this establishment is not justified by the truth of this church and to the extent that it is combined with equal rights of religious freedom for all citizens, the official establishment of a church is a symbolic act. Consider, for instance, the Danish case. The fourth article of the Constitutional Act of Denmark states: “The Evangelical Lutheran Church shall be the Established Church of Denmark, and as such shall be supported by the State.”⁹ The official and public recognition that a particular church is the national church is in and of itself purely expressive and symbolic (Lægaard 2011, 93).

In the second subcategory, SRE takes the form of a religious shaping of public space. Many different cases correspond to this second group: Crucifixes hang on the wall in classrooms, the Ten Commandments are displayed in courtrooms, nativity scenes are set up in public spaces, and “In God We Trust” appears on currency. Whenever such public displays of religious symbols have been contested, the U.S. Supreme Court as well as the European Court of Human Rights have found no problem with them, arguing that they are only expressive acts and not coercive in nature (*Lautsi v. Italy*; *Van Orden v. Perry*).

The last form of SRE is more subtle, and often goes unnoticed. Yet, although it is not as obvious as church establishment or the religious shaping of public space, it is a pervasive version of religious establishment. The cases in this third group take the form of a religious

⁸If a municipality authorized a private agent to set up a nativity scene in a public park, then this is a case of SRE. However, it would not qualify as SRE if this were done in a privately owned shopping mall.

⁹It should be noted that, in the case of the Danish church, the support provided by the state is not purely symbolic. The Danish church establishment includes, for instance, the funding of “church buildings, education of priest and the Ministry of Ecclesiastical Affairs by way of the ordinary state taxation from all members of the national church” (Lægaard 2011, 89).

shaping of public life, in a very broad sense. For instance, many national symbols have a religious origin; in Europe, many states have a cross on their flag, including the United Kingdom, Norway, Greece, and Switzerland. Another example is that in Western societies, the calendar is deeply religiously biased: Some religious holidays such as Christmas or Easter are public holidays, the entire society functions around the idea that Sunday is the weekly day of rest, and the calendar counts the years since the birth of Jesus Christ. Saying that this is the year 2021 is probably rarely heard as having any kind of religious significance. Yet, it is far from trivial that this is the starting point of the most widely used calendar in the world. Adopting a new and religiously neutral calendar is theoretically a possibility, but a very costly one.¹⁰

Not all of these forms of SRE seem to be equally controversial. An officially established church or the display of a crucifix in a parliament or in a public school is a much more serious case than having a cross on a national flag or maintaining the Gregorian calendar. It is also clear that the same symbol might be interpreted differently in different places. For instance, the color green does not have the same meaning on the flag of Ireland and on the flag of Saudi Arabia, although in both cases it has a religious dimension. Instances of SRE are very common in contemporary societies, they are extremely varied, and they can only be appreciated contextually.¹¹ Are some forms of SRE problematic, even in the absence of preferential treatment? And if so, how can we tell the difference between permissible and impermissible forms of SRE?

What Is Wrong with Symbolic Religious Establishment?

SRE is characterized by the fact that the public display of religious symbols is combined with an adequate

¹⁰This was attempted in France in 1792 with the establishment of the First Republic, following the 1789 Revolution. The revolutionary calendar avoided all religious references. It was quickly abandoned.

¹¹It might be objected that my conception of SRE is excessively broad since it includes anything from a symbolically established church to the adoption of the Gregorian calendar. But if a distinction is to be made between these two cases, it should be one based on normative grounds rather than on definitional ones, and this is precisely what I set out to do in this article. One would otherwise need a controversial conception of religion to claim that the Gregorian calendar is less religious than a church; I prefer instead to understand religion as anything that is genuinely considered as such by anyone. It does follow that SRE includes a high number of cases, but this is not a problem in itself since, as I argue in the next two sections, it is possible to distinguish permissible from impermissible cases.

protection of religious freedom and with the equal treatment of all citizens. If the symbolically established religion does not have any actual political or legal power, if no coercion at all is involved and if all citizens are treated in the same way, then what exactly, if anything, is wrong with SRE? Why would it be problematic for a liberal state to be purely symbolically associated with a religion?

The dominant argument in liberal political and legal philosophy focuses on the expressive harm that results from the message sent by the state through the religious symbol.¹² The argument is the following:

- P1: When a state symbolically establishes a religion, it sends a message to those who are not adherents of this religion that they are second-class citizens (at least in some cases).
 P2: The state should express equal respect toward all citizens.
 C: Therefore, SRE is impermissible in a liberal state (at least in some cases).

The argument relies on the assumption that the particular words and symbols used by a state in legal texts or in any kind of symbolic representation matters. The state expresses attitudes when it speaks, and it is important that the state expresses the *appropriate* attitudes. In particular, the liberal state should express equal respect for all, which implies that it expresses “a collective understanding of all *citizens* as equal members of the State, all equally part of ‘us,’ notwithstanding their racial, ethnic, or religious differences” (Anderson and Pildes 2000, 1520). Symbolic political equality is necessary.

This expressivist argument has been defended by many liberal legal and political philosophers (Ahdar and Leigh 2005; Anderson and Pildes 2000; Eisgruber and Sager 2007; Laborde 2017; Nussbaum 2008). It is most famously associated with the concurring opinion of Justice Sandra Day O’Connor in *Lynch v. Donnelly* (1984):

The Establishment Clause prohibits government from making adherence to a religion relevant in any way to a person’s standing in the political community. [...] Endorsement sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are

insiders, favored members of the political community. (*Lynch v. Donnelly*)

Symbols play a key role in the construction of the identity of a political community. Suggesting that this identity is at least partly based on religion implies that those who belong to religious minorities or who are not religious are second-class citizens (Laborde 2017, 135), that they do not “enter the public square ‘on equal conditions’” (Nussbaum 2008, 225). The problem comes from the message that the state sends through the words and symbols that it uses; it excludes some citizens from equal citizenship because of their religious commitments (or lack thereof).

The principle of equal respect expressed in P2 is noncontroversial—it is one of the basic tenets of liberalism. Three objections might be raised, however, regarding the interpretation and application of this principle in P1.

First, it might be argued that the principle of equal respect has a narrower scope than suggested in P1: Although equal respect must be applied to all coercive acts, it might not necessarily apply to noncoercive and purely symbolic acts. The objection assumes that such symbolic acts do not matter as much as coercive ones, precisely because they do not affect anyone’s rights. But such an objection is based on a gross misunderstanding of the significance of symbols. Consider the example of the Confederate flag that was long publicly displayed in many southern U.S. states. The flag itself is purely symbolic. Yet, it became increasingly controversial because of its association with slavery and white supremacy. Only the expressivist argument can explain what is wrong with a southern U.S. state displaying the Confederate flag: The flag should be interpreted as expressing a lack of equal respect for all citizens. This example illustrates clearly the importance of symbolic acts and of the messages that they sometimes send. Equal respect is ultimately a matter of appropriate attitude that must guide both how the state treats people and how it expresses itself toward them.¹³

Second, it might be argued that the exclusion does not come directly from the message itself. Rather, it already exists, and it is simply confirmed by the message. Maybe the exclusion comes from the unjust treatment of minorities, in the form of discrimination or oppression,

¹²Other arguments might be used to justify the wrongness of SRE. The alienation argument has, for instance, been discussed, and rejected, by Lægaard (2017) and Seglow (2017). The expressive harm argument has, however, been the object of more systematic defenses, particularly by Laborde (2017) and Nussbaum (2008), and it provides a more promising way to understand what is wrong with SRE.

¹³It might be argued in response that this would make the principle of equal respect excessively demanding: Isn’t it an impossible objective for states to achieve? There might indeed be many ways in which states currently fail to express equal respect for all in symbolic acts. But just because actual states fail to adequately apply a normative principle does not mean that the principle itself should be revised or rejected. Rather, it means that states should do better.

or maybe it comes from the fact that the state is endorsing not just one but multiple symbols, which taken together produce the effect of exclusion. In other words, the symbol itself, or on its own, might not be the source of the problem. However, even in such cases, the endorsement of any single exclusionary symbol makes the state complicit. If the symbol is not directly causing the exclusion of minorities, it is at least contributing to it, and the state is thereby failing to express equal respect toward all citizens. This is wrong in and of itself, and that is why it matters that we are able to identify symbols that send such a message of exclusion.

The third objection focuses on the application of the expressive harm argument. P1 suggests that only those cases of SRE in which the state is sending a message of symbolic political inequality should be considered impermissible. Consequently, the argument does not rule out all religious symbols. But if so, how can we distinguish permissible from impermissible cases of SRE? The characteristic feature of symbols is that they do not provide an explicit statement regarding what they mean. Who shall then be judge of what symbols imply? Without a specification of how this interpretation should be done and the criteria according to which it should be decided whether specific cases of SRE entail an expressive harm or not, the expressivist argument faces the challenge of indeterminacy (Lægaard 2017, 126; May 2012, 227–30).

A first option is to directly ask those who are non-adherents of the established religion whether they see SRE as implying that they are not full citizens. On this approach, the expressive harm of SRE is evaluated subjectively.¹⁴ Relying on the subjective perceptions of actual citizens is problematic for several reasons: Actual citizens might disagree about whether SRE implies an expressive harm or not, they might not feel harmed by the fact that they are treated as second-class citizens,¹⁵ and religious citizens might feel harmed in the case of religious non-establishment (Lægaard 2017, 122–23). Besides, the subjective evaluation also runs into practical difficulties: How many actual citizens should be asked, and how should they be selected? How should disagreements among citizens be interpreted? Empirical data might be useful to ascertain how different religious groups perceive SRE, but it cannot tell us whether this perception is *reasonable* and sufficient to conclude that

SRE is permissible or not (Laborde 2017, 135; Lægaard 2017; Seglow 2017).

The second option avoids many of these difficulties, as it relies on an objective approach. Here, it is not actual citizens who evaluate the message but an imagined “reasonable observer” (Laborde 2017, 135) or “competent participant” (Eisgruber and Sager 2007, 127), who provides an objective interpretation of these symbols. This reasonable observer has sufficient information about the particular society at stake to develop a reasonable interpretation to distinguish permissible from impermissible cases of SRE. That is why, for instance, the reasonable observer can conclude that Jim Crow laws sent a message of (racial) inequality, but that a city displaying “Happy Holidays” lightings and Christmas trees in public spaces is not sending a message of (religious) inequality.

The reference to a reasonable observer is, however, an insufficient response to the challenge of indeterminacy. It leaves open the question of *how* such a reasonable observer should interpret controversial cases. When the Danish Constitution states that the Evangelical Lutheran Church is the established church of Denmark, is it reasonable to say that this is sending a problematic message to nonadherents? What exactly is the message sent by the display of a cross in a classroom, parliament, or public park? In the Bavarian case, Söder claimed that the display of crosses in public buildings is not sending any message of inequality. Would a reasonable observer agree?

The expressivist argument is compelling in theory but hard to apply in practice, especially because it is reasonable to think that only some religious symbols send a message of exclusion. What it requires is a much more specific account of how to determine when a symbol is reasonably interpreted as sending a message of political exclusion. I defend such an account in the following section.

How to Assess Cases of Symbolic Religious Establishment

The interpretation of symbols is a necessarily contextual task, and we should expect that people will disagree about the correct interpretation of particular symbols. But I want to argue that the interpretation of symbols does not have to be left to gut feelings, to the actual (and sometimes problematic) perceptions of individuals, or to unsubstantiated impressions. Instead, I construct and defend a three-step test that should guide the interpretation of religious symbols. Each step focuses on one of three distinctive elements of a religious symbol: (1) what the

¹⁴This is what has been called the alienation account (Lægaard 2017, 121–23; Seglow 2017, 191–93).

¹⁵As Perez, Fox, and McClure have recently showed, there is no or little “empirical support to demonstrate that religious minorities in states (both democratic and nondemocratic) that support the majority religion [...] grow resentful of the state” (2017, 433).

symbol is a *reference* to (is the symbol divisive or not?), (2) the *framework* in which it is displayed (is the symbol political or not?), and (3) the *reasons* based on which SRE is justified (is the symbol justified or not?).

The three-step test only aims at answering the following question: Does the religious symbol send the message that some citizens are excluded from equal citizenship because of their religion or lack of religion? In other words, it is a test of *symbolic political exclusion*. The three steps of the test are necessary; impermissible cases of SRE are those that are divisive, that are political, *and* that are not justified. The order of the three steps also matters. Symbols that are not divisive (step 1) do not send a message of symbolic political exclusion, independently of how political or justified they are. Divisive symbols that are not political (step 2) do not send a message of symbolic political exclusion either; they might be impermissible for other reasons, but not because of the specific expressive harm associated with some cases of SRE. Finally, symbols that are both divisive and political will only be considered permissible if they are justified (step 3) because the reasons used to justify them might affect the interpretation of the symbol and of the message that it sends.

With that caveat, I now turn to the discussion of each of the three parts of the test.

Reference: Divisive or Not?

The first element that should be evaluated is the content of the symbol: What is it that the symbol is referring to? What is it a symbol *of*? A symbol is characterized by the fact that it stands for something else and conveys a meaning that goes beyond the symbol itself—a dove is a symbol of peace, an arrow represents a direction, and Christmas refers to the birth of Jesus, and by extension to Christianity.

The importance of the question of the reference of the symbol is reflected in the debates that took place around the *Lautsi v. Italy* case (*Lautsi v. Italy*, App. No. 30814/06, Eur. Ct. H.R. [2011]). Ms. Lautsi had complained that crucifixes were displayed on the walls of classrooms in an Italian state school where she was sending her two children. The Grand Chamber of the European Court of Human Rights (ECHR) found that there was no violation of freedom of conscience. Although the crucifix was explicitly recognized as a deeply religious symbol, it was argued that it was an “essentially passive symbol” (*Lautsi v. Italy*, 2011, §72) and that it was part of a “tradition” that states should be free to perpetuate (§68).

Although it did not deny that the crucifix refers to the Christian religion, the 2011 ECHR decision participated in the “trend toward the cultural transformation of religious symbols” (Beaman 2013, 68), suggesting that it is also a reference to the particular culture of the Italian society. In societies that are predominantly Christian, Christian symbols are not merely religious symbols, but they are also part of the history and traditions of these societies.¹⁶ Does this mean that these symbols are less religious and, if so, less problematic? This is the argument put forward by the Italian government: The cross “could be perceived not just as a religious symbol, but also as a cultural and identity-linked symbol, the symbol of the principles and values which formed the basis of democracy and western civilization” (*Lautsi v. Italy*, 2011, §36).

I believe that this argument fails, however, because what makes a particular symbol problematic is not the fact that it is referring to something religious but rather that it is referring to something divisive. I rely here on Laborde’s account of divisiveness: Something is divisive when it is a “marker of social vulnerability and domination in the society in question” (Laborde 2017, 137). Divisiveness is not simply what is the object of reasonable disagreement, but rather what has provided a salient and politically relevant “line of social conflict and exclusion” (Laborde 2017, 136). Laborde’s account of divisiveness has two important features. First, it is contextual; something might be a marker of domination in one society but not in another. Religion, then, is not necessarily divisive. Second, religion is not special in this account of divisiveness. Religion might be divisive, but it is far from being the only source of divisiveness in contemporary societies; race, gender, or cultural identity can be just as divisive as religion. Consider the case of the Confederate flag: Although it is not religious, it is very clearly and unambiguously referring to something divisive. The same applies to the *Lautsi* case. Arguing that the crucifix is merely a cultural symbol misses the point, as it can be a divisive symbol, whether religious or not.

The first task of the reasonable observer is to assess how divisive the symbol is. This is a deeply contextual exercise, as the same symbol might be considered divisive in some places but not in others. Consider, for instance, the references to God in the United States: “In God We Trust” is the official motto of the state, and it is very common for political leaders to end their speeches with “God bless America.” These statements would be considered divisive in many European states, but not in the United States,

¹⁶Symbols of minority religions, on the other hand, are exclusively religious and therefore more easily excluded from public spaces (Beaman 2013, 99–104).

where they are interpreted as a reference to the nondivisive American civil religion. In other words, it does not refer to the same thing in Europe and in the United States. The reasonable observer is supposed to be sufficiently informed about the society, its history, and its public culture to evaluate these differences.

Whether a symbol is divisive or not matters greatly for the distinction between permissible and impermissible cases of SRE. This does not mean, however, that distinguishing divisive from nondivisive symbols is always an easy task. Symbols are intrinsically ambiguous and do not come with instructions of interpretation. Consider the case of established churches in Europe. They are religious references, of course, but they are also political and historical references that have played a significant role in the construction of the state and national identity. For many Brits, the official establishment of the Anglican Church is similar to the existence of the monarchy—it is something that defines the British political identity in a noncontroversial way. But for others, it is a problematic endorsement of the divisive Anglican religion. Is an established church a genuinely religious symbol or is it merely a historical symbol, a vestige of the past?

In societies in which religion is a salient line of domination and exclusion, to the extent that a symbol is religious, it is equally divisive. But symbols can be largely perceived as being nonreligious, even when they have a religious origin. This seems to be the case for the crosses on Scandinavian flags. These crosses are usually not perceived as being divisive precisely because they are usually not perceived as being religious. This is partly due to the symbol of the cross itself; a cross can symbolize different things to different people and in different contexts, and it is not necessarily referring to something religious (Laborde and Lægaard 2019, 183). The same applies to the crescent; it can be a symbol of Islam, an attribute of Shiva in Hinduism, or simply a reference to the moon. One can therefore not claim that either crosses or crescents are necessarily religious and divisive symbols. A crucifix, on the other hand, is a cross with the body of Jesus attached to it; it is more immediately perceived as religious and therefore as divisive.

But even when a symbol is clearly and unambiguously religious and divisive, this does not mean that it is necessarily problematic. The religion that an illuminated Christmas tree on a public square is referring to is the same as the religion that the display of the Ten Commandments in courtrooms is referring to: These two symbols are divisive in the same way, but we have a strong intuition that they are not equally problematic. It follows, then, that although all nondivisive symbols are

permissible,¹⁷ only some divisive symbols are impermissible. In other words, assessing the symbol itself, and determining whether the symbol is divisive or not, is not sufficient to appreciate whether it is sending a message of symbolic inequality.

The insufficiency of the criterion of divisiveness distinguishes my argument from Laborde's, who argues that whenever religion (or any other social identity) is divisive, "it should not be symbolically endorsed and promoted by the state" (Laborde 2017, 137). As I will argue, some divisive symbols can be permissibly symbolically endorsed by the state, depending on the framework in which the symbols are displayed and on whether they can be justified. This insufficiency also justifies that, in controversial cases, one should err on the side of caution and conclude that the symbol is divisive. This is necessary to make sure that we can identify all impermissible cases. If a contested symbol is interpreted as being nondivisive, it will automatically be considered as permissible although it might actually be sending a message of political exclusion. However, if a contested symbol is interpreted as being divisive, it can still be considered as permissible. If there is in fact no message of political exclusion conveyed by the symbol, this is likely to be revealed in one of the two remaining steps of the test. There is only a defeasible claim against divisive symbols.

This is the first step of the test for the permissibility of cases of SRE: When a religious symbol refers to something divisive, it is *pro tanto* wrong for a liberal state to publicly display it or to associate itself with it.

Framework: Political or Not?

The second element that should be taken into consideration in the evaluation of cases of SRE is the framework in which the religious symbol is displayed. The interpretation of the meaning of a symbol depends on the kind of place in which the symbol is located, and on what else is displayed next to it. What a symbol means, then, is partly a function of *where* it is displayed.

The significance of this second element can be illustrated with an example. Consider a crucifix, which refers unambiguously to something divisive in religiously diverse societies. The same crucifix can be found in different locations—above the speaker's chair in a parliament,

¹⁷States use countless, usually nondivisive, symbols. Many states, for instance, adopt a national animal symbol: the rooster in France, the bald eagle in the United States, or the unicorn in Scotland. These could potentially become divisive if they became associated with something divisive, such as an authoritarian regime that used the same symbol. As long as they remain nondivisive, they are non-problematic.

on the wall of a classroom in a public school, in front of a courthouse, as part of an art exhibition in a state-funded museum, on the side of a hiking trail in the mountains, or on tombstones in a cemetery. The symbol itself remains exactly the same, but the particular framework in which it is displayed affects the message that it sends. The display of a crucifix will be considered as perfectly innocuous in some of these cases, but as controversial in others. Taking into consideration the framework in which the symbol is displayed makes sense of this difference.

What is the difference between, on the one hand, a parliament, a classroom, and a courtroom and, on the other hand, a museum, a public street, and a cemetery? Although they are all public spaces, they are not all public in the same way.¹⁸ There is an important distinction between political and nonpolitical public spaces. On the one hand, parliaments, courtrooms, and classrooms are political public spaces; they are closely associated with the exercise of political power or the definition of the political community. This gives the symbol a political dimension: A divisive religious symbol displayed in such places can therefore be reasonably interpreted as sending the message that what it is referring to matters for these decisions or for how citizens are understood and defined. The proximity to political power or the definition of the political community makes a divisive identity politically relevant, bringing the symbol one step closer to sending a message of political exclusion. Public schools, although they are not places where political power is exercised in the narrow sense, are political spaces in another sense: What children are taught is what they need to know to become autonomous citizens. Education provides a common basis of knowledge and values to all, and it participates significantly in the construction of the idea of the political community and its identity. Religion itself does not have to be fully excluded from public schools, and it is an important topic that children should learn about to understand historical events as well as contemporary societies. Religious symbols, however, do not provide such information about religion and instead can be reasonably interpreted by children as sending the message that the religion is *true*, since the school is first and foremost a place for the transfer of knowledge.¹⁹

On the other hand, there are many nonpolitical public spaces: They might belong to public entities, might be maintained by them, and might be open to everyone,

¹⁸By *public space*, I mean only spaces that are publicly owned, not privately owned spaces that are open to the public. Not all cemeteries or museums are public in that sense.

¹⁹This only applies when only one religion is recognized, not when symbols of multiple religions are displayed.

but they do not typically participate in the creation of a political identity.²⁰ Streets and landscapes are unavoidably shaped by history and culture. In Western societies, religious symbols on government property are the visible reminder of their Christian past; there are crosses on war memorials, on statues, and on historical buildings, and in Europe wayside crosses are very common. Whenever these symbols are displayed on public property, they can be interpreted as a form of SRE. In most, though not all cases, these symbols will be considered as permissible since they usually cannot be reasonably interpreted as being relevant for the political identity of citizens.²¹ They reflect more the past of a society than its present character, and therefore do not convey any message of who does or does not belong to the community of political equals. Paris's Notre Dame Cathedral is a monument of great historical, cultural, and artistic importance, but the mere fact that it belongs to the French state is not understood as making the Catholic religion a relevant feature of what it means to be French today.²² This means that it is not necessarily wrong to maintain such religious symbols as crosses or religious statues on public squares or streets. However, it means neither that it is not problematic to

²⁰There might be special cases in which these spaces would have a political meaning. They would then have to be considered as political spaces, rather than as nonpolitical spaces. Consider the following example of Eisgruber and Sager: "Imagine that the officials of a small town—let's say 'Fineville'—have decided to erect a handsome highway-spanning arch as the portal to their municipality. Now imagine two different inscriptions they might choose to blaze across their arch. One imagined slogan would be 'Fineville—A Nuclear-Free Community.' The other would be 'Fineville—A Christian Community'" (Eisgruber and Sager 2007, 124). The explicit statement about the identity of the village makes it a political symbol. The difference between the two cases is that "nuclear-free" is not divisive. Although the issue of nuclear energy might be a "matter of controversy" (Eisgruber and Sager 2007, 124), it is not a socially vulnerable identity. Since it is a nondivisive symbol, it is permissible for the state to endorse it.

²¹The recent U.S. Supreme Court case *American Legion v. American Humanist Association* (American Legion v. American Humanist Association, 588 U.S. ____ [2019]), regarding the display of a cross on a public highway in Bladensburg, Maryland, shows that some of these cases can still be very controversial. The objective of this monument is to honor the memory of fallen soldiers in World War I. It can be argued that the cross is sending a message of exclusion toward non-Christian soldiers since the memorial does not honor them: "The cross was never perceived as an appropriate headstone or memorial for Jewish soldiers and others who did not adhere to Christianity" (Justice Ruth Bader Ginsburg, dissenting opinion). To the extent that military service is a civic duty, this might be interpreted as a message of political exclusion.

²²Not all historical monuments are irrelevant for political identity. The decision of the Turkish government to revert Hagia Sophia into a mosque, for instance, gives the monument an indisputable political dimension.

create such symbols when they do not exist²³ nor that it is not problematic to prohibit the similar display of symbols from different religious groups. That it is permissible to maintain symbols does not entail that it is permissible to paint new crosses on sidewalks or to prohibit the building of minarets.²⁴ Divisive symbols in public non-political spaces are not always sending a message of political exclusion, although it is important to note that they can be impermissible for different reasons.²⁵

Like the divisiveness criterion, the fact that a symbol is displayed in a political framework does not provide a definitive answer regarding which divisive symbols are permissible. It tells us instead that the more closely the symbol is associated with the definition or decisions of the political community, the more problematic it becomes. The distinction between political and non-political public spaces explains, for instance, the difference that exists between the display of a crucifix above the speaker's chair in the parliament of Québec, and the Mount Royal Cross, a 31-meter-high cross that stands on top of a hill in Montreal. Although the latter is a much more visible religious symbol, it is not reasonably interpreted as a political symbol. The crucifix, on the other hand, precisely because it is displayed in such a meaningful framework, should be interpreted as a political symbol. Interestingly, the *Kreuzpflicht* is mandatory in Bavarian agencies of public administration, including prisons, police stations, and the State Chancellery, which are clearly political public spaces, but only recommended in museums or theaters, where the crucifix is less likely to be interpreted as a political symbol.

This second step of the test asks, then, whether the symbol is *political* in any meaningful sense: When the

framework in which a divisive symbol is located is such that it is reasonably interpreted as being part of the definition of the political community, it is *pro tanto* wrong for a liberal state to publicly display it or to associate itself with it.

Reasons: Justified or Not?

The first two elements of the evaluation of SRE focus on what the symbol refers to and where it is displayed. The third element focuses on *why* it is displayed.

In order to assess the message that a symbol is sending, it is important to take into consideration the reasons that are actually put forward to justify the decision to introduce or maintain that symbol. What policy makers or judges say is of particular importance here. But of course, not just any kind of reason will do. Three criteria must be met for the justifiability of SRE: The symbol must be based on reasons that are compatible with equal respect, that are plausible, and that are sufficient. The third task of the reasonable observer, then, is to identify and evaluate the reasons that are given to support SRE.

First, the reasons used to justify SRE must be compatible with the principle of equal respect. Reasons that appeal to the truth of a religion or to the intention to exclude some citizens from the political community because of their religion are incompatible with this principle: Whenever such reasons are used, SRE is not justified. Viktor Orbán, for instance, appeals to Christianity not simply as a tradition but as a source of authority: “We believe that, after a period of anti-Christian, internationalist governance, Hungary needs a period of governance that seeks to follow Christian values; and we accept that task” (Orbán 2017). It is based on such Christian values that his government has recently amended the constitution to define family as “based on marriage and the parent-child relation” (Dunai and Komuves 2020).²⁶ This state-supported religious interpretation of the family ultimately relies on the idea that the Christian family is the only true family; it is therefore not justified.

Reasons that directly exclude some citizens also violate equal respect. Consider the example of the renaming of Indian cities. In the 1990s, the names of many cities were changed: Bombay became Mumbai and Madras became Chennai. The explicit motivation then was to reject the names inherited from the British colonial rule.

²³See the “Reasons: Justified or Not?” section.

²⁴I agree with Miller that there is no need for the liberal state to be neutral in the kinds of symbols that it displays in public (non-political) spaces; it does not commit any wrong by maintaining the vestiges of its Christian heritage. It does not follow, however, that “a majority is entitled to ensure that the appearance of public space reflects its own cultural values” (Miller 2016, 448).

²⁵Examples of controversial cases of divisive symbols in public nonpolitical spaces include the statue of Christopher Columbus in New York or the statues of Cecil Rhodes on several university campuses (the controversy started regarding a statue of Rhodes displayed on the campus of the University of Cape Town, a public institution). It is reasonable to argue that these are impermissible, but this is not for the reasons that make some cases of SRE impermissible: What is wrong with these statues is not what they say about the understanding of political community or the definition of citizens specifically, but that they are sending the message that colonialism is something honorable. This is different from, and arguably more serious than, sending a message of symbolic political exclusion. The problem here is not symbolic inequality but a publicly supported tribute to gross violation of basic rights.

²⁶It should be noted that, although the definition of a family is in itself symbolic, the existence of other laws that provide certain rights and benefits to married couples and that define a marriage as the union of a man and a woman means that it leads to unequal treatment of citizens, in particular of same-sex couples.

Reclaiming Indian history and identity and thereby denouncing the harms of the colonial rule is an appropriate justification in that case. Compare this with the more recent renaming of other Indian cities. The BJP government of Uttar Pradesh decided in 2018, for instance, to change the name of Allahabad, inherited from the Mughal emperor Akbar in the sixteenth century, to the Hindu name Prayagraj. The explicit motivation was to “rectif[y] the mistake made by Akbar” (Frayer 2019), to reject a name that reflected the Muslim heritage of India and to instead emphasize its Hindu identity.²⁷ But whereas rejecting colonial rule is compatible with equal respect, rejecting the legacy of a religious minority is not. The attempt to rewrite history to create the myth of India as a homogenous Hindu nation sends a clear message of exclusion to religious minorities; the renaming of Allahabad is therefore not justified.

Many reasons are compatible with the principle of equal respect and can be used to justify SRE. Often, these reasons focus on the intrinsic value of the symbol. It might be argued that the symbol should be maintained because it is part of the nation’s heritage, because it is key to the cultural or historical self-understanding of the community, or because it is something of significant cultural or aesthetic value. Something would be lost if we were to remove the symbol. Maintaining the statue of Christ the Redeemer in Rio de Janeiro can be justified in this way. Other important reasons focus instead on problems associated with the removal of the symbol. It might be argued that removing the symbol would be too costly or too complicated, or that there would be no better alternative. In that case, it is not the religious establishment itself that is valuable, but disestablishment that is too problematic.²⁸ This is a compelling argument in favor of maintaining the Gregorian calendar. Any of these reasons is compatible with equal respect and therefore satisfies the first criterion of the justifiability of SRE.

Second, the reasons provided to justify SRE must be plausible; it must make sense for the particular symbol in question. Although the value of heritage is an appropriate reason, not all cases of SRE can be plausibly supported by it. To explain this, the distinction introduced by Laborde and Lægaard between vestigial and neo-establishment is

particularly useful (2019, 183–84). Only cases of vestigial establishment can be justified by the heritage argument. Neo-establishment cannot be thus justified because it is not plausible to argue that the introduction of a new symbol is necessary to protect one’s heritage when that heritage has not required such a symbolic protection so far. Furthermore, we should keep in mind that the value of heritage and the defense of one’s identity are often used as dog whistles to those who actually wish to send a message of exclusion to minorities. Neo-establishment is not “a benign cultivation of vestigial traditions and symbols” but a “distinctively reactive movement” that sends a clear exclusionary message (Laborde and Lægaard 2019, 184).²⁹ The plausibility criterion helps to identify cases in which reasons compatible with equal treatment are used as cover-ups for more questionable motivations. The explicit arguments put forward by policy makers should be taken into consideration but should not always be taken at face value.

The *Kreuzpflicht*, for instance, can be reasonably interpreted as relying on an implausible reason. The reason that Söder appealed to in order to justify his decision is that the cross is a symbol that refers to the cultural heritage of Bavaria. But what is the point for the Land of Bavaria to decide in 2018 to publicly recognize and endorse this heritage in such a divisive way? The decision has to be understood in the context of rising Islamophobia and of a political obsession with the question of immigration and the supposed threat that it represents for national identities. In an interview published in 2018, Söder stated: “of course there is religious freedom, but Germany is Christian and Western” and “Islam is not identity-forming and culture-shaping for our country” (Friedmann, Neukirch, and Pfister 2018, my translation). Protecting one’s heritage is one thing; suggesting that Christianity still defines German national identity today is quite another. It is particularly telling that the debate on national identity tends to be used as an excuse to talk about Islam specifically. It is therefore reasonable to consider that the *Kreuzpflicht* sent a message of political exclusion to those who are not Christian, in particular to members of the Muslim community.³⁰ As Maclure

²⁷This case also illustrates the fact that the removal of a religious symbol can be meant to send a message of exclusion, and therefore that removing symbols should not always be equated with equal respect for all.

²⁸Disestablishment is not, however, always very costly. In some cases, removing a religious symbol could be done without particular difficulties and without significant financial costs. This would be the case, for instance, if we stopped to recognize religious holidays as public holidays.

²⁹Laborde and Lægaard have identified an important distinction between vestigial and neo-establishment, but I believe that the normatively relevant difference between these two kinds of SRE is to be found in the reasons given to justify the symbols, and not in the fact that already existing symbols have “lost their religious valence” or are more “benign” (Laborde and Lægaard 2019, 183).

³⁰This is compatible with acknowledging that some might have been genuinely motivated by a desire to protect a Christian heritage that they perceived as under threat. I do not claim that every person supporting the *Kreuzpflicht* saw it as a way to send a

and Taylor have noted, a religious symbol might be permissible “when it is a reminder of the past rather than a sign of religious identification” (2011, 50). The overall context around the *Kreuzpflicht* supports the interpretation that the reason put forward by Söder is not plausible since crosses in this case are at least as much a sign of religious identification as they are a reminder of the past.

Third, the reasons provided to justify SRE must be sufficient, that is, they must outweigh the reasons that might be used to oppose SRE. The sufficiency criterion explains why not all cases of vestigial establishment are permissible. In Québec, a crucifix was installed in the National Assembly above the speaker’s chair in 1936. Although the crucifix had been there for some time and could be plausibly supported by the heritage argument, it became particularly controversial in the last few years when the Québec government announced a ban on religious symbols for public workers in positions of authority. The ban was justified by an appeal to secularism and religious neutrality. The reasons put forward by the government to support the ban were increasingly seen as inconsistent with the reasons used to justify the crucifix. In other words, the claims of the secular identity of Québec ended up weakening the heritage argument, ultimately outweighing it: In 2019, the government removed the crucifix from the National Assembly.

The heritage argument might also be insufficient in the sense that it does not tell us, on its own, why some historical event or tradition is something that should be commemorated and celebrated. A symbolic endorsement is not merely a value-neutral acknowledgment that such events and traditions are part of a society’s history. Those who appeal to the value of heritage should also be ready, then, to explain why what the symbol is referring to is worth being the object of public endorsement and recognition.

The third and final step of the test, then, is the following: When the symbol is both divisive and political, SRE can only be permissible if it is justified by reasons that are compatible with equal respect, that are plausible, and that are sufficient. The heritage argument can provide such a justification for vestigial establishment, although it will not always be sufficient. I believe, however, that no such justification is available for neo-establishment; the creation of SRE, therefore, is always impermissible.

At this point, however, we reach the limits of what general guidelines for the evaluation of SRE can tell us.

message of exclusion to non-Christians. However, considering the context and Söder’s various public statements about Christian identity and Islam, the interpretation of the *Kreuzpflicht* as sending overall such a message is a reasonable one.

It is up to each society to decide, on a case-by-case basis, whether the balancing of reasons tips the scale in favor of maintaining the symbol as a reminder of their past or in favor of removing it because of its problematic message. It is also important to note that this balancing is likely to evolve over time. Symbols that have been until now considered as permissible might tomorrow be considered as impermissible. SRE can only be justified on a temporary basis.

Conclusion

When it comes to symbolic religious establishment, there can be no either–or answer. Some cases of SRE, such as the display of the Ten Commandments in a courtroom, are evidently problematic. Others, such as the display of most religious statues in public spaces, seem rather harmless. In this article, I have attempted to explain these different intuitions, and I have provided reasons to justify them. What makes some cases of SRE impermissible is the fact that they send a message of political inequality. In some cases, the purely symbolic endorsement of a religion means that those who do not belong to this religion are not considered as full citizens.

The concern that many have raised with such an account of expressive harm is the difficulty in distinguishing permissible from impermissible cases of SRE. I have defended a three-step test that is meant to address this concern. When assessing cases of SRE, we should focus on three key questions: First, is the religious symbol divisive? Second, is the religious symbol political? Third, is the display of the religious symbol justified? I have argued that whenever a religious symbol is divisive, political, and not justified, it is always impermissible. The test does not avoid the difficult issues of how these questions should be answered in particular cases, and of what should be done when different reasonable interpretations are given. However, it explains the relevant differences between some easy cases (e.g., the Ten Commandments and the Christmas tree), and it provides guidelines for the assessment of hard cases (e.g., established churches in Europe). In particular, based on the three-step test, I have argued that the *Kreuzpflicht* is impermissible: The cross refers unambiguously to something divisive, it has been given a deeply political meaning by being displayed in buildings closely associated with the exercise of political power, and it is not justified since the reason introduced to justify it is not plausible. It symbolically excludes many citizens from the political community and is therefore impermissible.

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