Manifestation of Belief and the "Liberal" Law of Religion: Why It Is Time to Rethink the Status-Quo?

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Abstract

Manifestation of belief is a key component of religious freedom, however in modern pluralist states there are inherent conflicts between practices of the more religious minorities and those of the secular majority. In attempting to mediate those conflicts judges have been faced with the sensitive task of determining the extent to which a particular symbol or practice is worthy of protection by the law. The case law arising from this process has produced some inconsistencies and has shown that not all symbols are equal before the law. As a matter of practice, the law of religion is based on liberal values which tend to favour faith based on orthodoxy over orthopraxy. This paper argues that the time has come for a remodelling of the current approach to manifestation of religion and belief and puts forward a holistic approach which considers religion as an element of identity and as such ascribed rather than merely a life choice. It explores the possibility of a modification of current legal tests which would give way to this approach. The argument is considered from three different perspectives namely the emphasis on autonomy within the 'liberal law of religion,' the religious vs. secular binary present within the courts' approach and the difficulty of defining religion and belief.

Keywords

Religion – belief – symbols – manifestation of belief – identity – equality – autonomy

1. Introduction

When it comes to manifestation of religion or belief in modern pluralist societies, the law is not applied to all equally, resulting in discrimination and disadvantages. This is evidenced by the large volume of cases that courts have had to grapple with over the past two decades. The case law on manifestation of belief has produced many inconsistencies leaving a gap in protection of both religion and belief. Judges have assumed competencies in areas that are better left to individuals and theologians.

These include attempting to define religion and belief, deciding whether an individual's religious freedom is engaged and assessing whether a particular form of manifestation is indeed a requirement of the faith or belief in question.[1] This article questions whether approaching manifestation of belief from an identity rather than purely an autonomy perspective would enhance religious freedom and equality. It is submitted that the law of religion has an inherent liberal bias which places a large emphasis on individual autonomy and wrongly assumes that everyone is on an equal level playing field when it comes to making personal choices. As a result, religion has been conceptualised both as a matter of conscience for which the individual must take responsibility and inevitably bear any consequences[2] or as an elective characteristic of individuals emanating from a rational choice.[3] As such, religion has at times been downgraded in relation to other protected characteristics such as sex, gender or disability. It has also led to the exclusion of some groups and practices which the

[1] See for instance Brett Scharff, 'The role of judges in determining the meaning of religious symbols' in Jeroen Temperman, (ed.), *The Lautsi papers: multidisciplinary reflections on religious symbols in the public school classroom* (Leiden: Martinus Nijoff, 2012); Christopher McCrudden, *Litigating Religions* (Oxford: OUP 2018); Sylvie Bacquet, *Religious Symbols and the Intervention of the Law* (Abingdon: Routledge, 2020); Peter Cumper and Tom Lewis, 'Empathy and Human Rights: The Case of Religious Dress', 18 *Human Rights Law Review* (2018), pp. 61–87.

[2] On religious practice and individual responsibility see further Jonathan Seglow, 'Religious accommodation law in the UK: five normative gaps', 21:1 *Critical Review of International Social and Political Philosophy* (2018), pp. 109-128.

[3] See Rational Choice Theory (RCT) in Grace Davie, *The Sociology of Religion* (London: Sage, 2013), pp. 67-89.

courts do not deem to fit within the liberal understanding of religion and belief. While a liberal approach remains the preferred course of action, I propose that it may be time to refine the current approach to manifestation of belief and introduce what I call a 'holistic approach' which places less emphasis on religion and belief per se and refocuses instead on individual and collective identity. While this approach remains liberal in that it seeks to promote and protect human rights, it is based on an understanding of religion and belief as inherent to a person's identity and therefore ascribed rather than merely a life choice.[4] It also seeks to enhance equality rather than just focussing on freedom[5] and highlights the importance of identity in modern pluralist societies.[6] From a theoretical standpoint it presupposes an understanding of religion as one of the many conceptions of the good rather than as something special in need for special treatment by the law.[7] The aim of the holistic approach is to focus on the individual or the group rather than the belief or religion itself.

In advancing those arguments section 2 will provide a diagnosis of the problem namely what is wrong with the liberal law of religion, section 3 will review judicial approaches to manifestation of belief while section 4 introduces the concept of religion as identity and makes a case for a holistic approach to manifestation of belief. The article uses a mixed method which looks at the issue from different angles namely the emphasis on autonomy within the law of religion, the secular binary within judicial approaches and the difficulty with defining religion.

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[4] See further Sylvie Bacquet, 'Religious Symbols and the Making of Contemporary Identities' in Russell Sandberg (ed.) *Religion and Legal Pluralism* (Farnham: Ashgate, 2015) pp. 113-130.
[5] While religious freedom is the ability for people of all faith and none to have and to practice their belief, religious equality means treating all religions the same. In the UK the distinction is reflected in the legislation with the Human Rights Act 1998 dealing mainly with religious freedom and the Equality Act 2010 dealing with discrimination on the ground of the protected characteristics. For the purpose of this article, I will use both freedom and equality interchangeably. For a full account of the UK legislation see further Bacquet *supra* n. 1, Ch. 6.
[6] On the formation of modern identities see Charles Taylor, *Source of the Self* (Cambridge, MA, Harvard University Press, 1989).
[7] For a summary of the main theories of religious freedom see further Bacquet, *supra* note 1 pp. 138-148.

2. The law of Religion: Liberal Foundations

I have termed 'the liberal law of religion', the existing legal framework for the protection of religious freedom. The right to freedom of religion is grounded in international human rights provisions such as article 18 of the Universal Declaration of Human Rights (UDHR), article 18 of the International Covenant on Civil and Political Rights (ICCPR) and article 9 of the European Convention on Human Rights (ECHR). It is clear that human rights law is inspired by liberal values, such as autonomy, equality and individualism and as many have noted, the law on religious freedom reflects an implicit Christian focus on belief.[8] As put by Koppelman, Christian priorities are reflected in the notion of human rights to religious liberty and 'religious 'liberty' tends to privilege beliefs rather than practices.'[9] The construction of article 9 of the ECHR is a testament to this; while the *forum internum*[10] benefits from absolute protection, the *forum externum*[11] is subject to limitations and as such it has been argued that the Convention excludes a number of groups for whom it is difficult to disconnect beliefs from manifestation of the same. In other words, the belief cannot exist in a vacuum it needs the manifestation to be fully in existence.[12] Anthropologist Talal Asad rightly observes that the right to freedom of religion and belief is the product of a specific culture and as such it is more functional to that particular culture than others.[13] The human rights discourse therefore inevitably

[8] Méadhbh McIvor, 'Social Anthropology' in Russell Sandberg, Norman Doe, Bronach Kane and Caroline Roberts (eds) *Interdisciplinary Approaches to Law and Religion* (Cheltenham: Edward Elgar 2019), p. 243; Suhraiya Jivraj, *The Religion of Law* (Basingstoke: Palgrave, 2013), p. 7.
[9] Andrew Koppelman, 'What kind of human right is religious liberty?' in Rex Ahdar, *Research Handbook on Law and Religion* (Cheltenham: Edward Elgar, 2018), pp. 103-123.
[10] The individual freedom to believe (article 9.1 of the ECHR).
[11] The freedom to manifest that belief (article 9.2 of the ECHR).
[12] See for instance Lourdes Peroni, 'Deconstructing 'Legal' Religion in Strasbourg', 3(2) *Oxford Journal of Law and Religion* (2014), pp.235-257.
[13] Talal Asad, *Formations of the Secular. Christianity, Islam, Modernity* (Palo Alto: Stanford University Press, 2003), see chapter 4 and in particular his theory on 'the self-owning human.'

reflects Western values and its historic core lies in treating religion purely as a matter of conscience.

Despite our expectation that the law ought to be a neutral and objective norm, it is in fact value laden, and this is particularly salient in relation to religious freedom. As put by political philosopher Plant 'the legal and regulatory requirements of a liberal political order in many respects challenges religious practices and the ways in which religious beliefs are manifested.'[14] To this end Plant questions whether only a 'liberalised' form of religion can seek a role in a liberal society. This puts into question the extent to which the current legal framework for religious freedom is suited to minority religions[15] such as Islam, Sikhism or Judaism whose conception of religion permeates every aspect life. Before moving further with this argument, it is necessary to outline the main features of a 'liberal society' and what it expects of religion.

2.1 Liberalism and Religion

The controversies which have emerged in relation to the place of religion in 21st century liberal states are a testimony to the potential for conflicts between some forms of liberalism and more visible expression of religion. While liberalism initially emerged as a solution to religious conflicts and has liberty at its core, some of its values may be ambivalent with religion. There are multiple declinations of liberalism and attempting to define them all is beyond the scope of this article, but it is interesting to look at some common features which are present in most variants.[16]

[14] Raymond Plant, 'Religion in a liberal state' in Gavin D'Costa, Malcolm Evans, Tariq Modood and Julian Rivers, *Religion in a Liberal State* (Oxford: OUP, 2013), p. 9.
[15] A number of scholars have even started to question the extent to which the right to freedom of religion and belief, as conceived in the liberal law of religion is still meaningful. See for instance Winnifred F. Sullivan, 'The Impossibility of Religious Freedom' (Princeton: Princeton University Press, 2005). See also Koppelman *supra* note 9, p. 108.
[16] I use the term 'liberalism' loosely to refer to the main political philosophy underpinning the Western ideal of democracy.

Ahdar and Leigh identify four common attributes of liberalism which are particularly salient to the field of law and religion, namely individualism, rationalism, neutrality and the privatisation of religion. Let us now see how each of those features may impact manifestation of belief in 21st century modern pluralist states.

Individualism is at the centre of liberalism; as put by Tushnet the liberal state focuses on the relationship between the State and the individual and what he calls 'intermediate institutions' such as the family, churches and voluntary societies are accorded less importance.[17] Individual autonomy can indeed be a difficult concept to grapple with for some religious minorities who tend to identify in relation to the group rather than as an autonomous being.[18] Many conflicts which have arisen in relation to manifestation of belief have touched upon this notion of autonomy when the liberal state attempts to impose its liberal stance on a specific religious group. This has been particularly relevant in relation to Muslim women and dress when head covering is perceived as a threat to autonomy. The problem with this view is that it is based on an assumption that the veil (either the hijab or niqab) is necessarily imposed on women despite research pointing to the contrary.[19] While individualism is important to religious freedom it fails to understand the nature of group rights. Along the same lines, political theorist Bhiku Parekh is critical about what he calls 'liberalism's imperialism' which is the tendency of Western political theory to assume that a life based on autonomy and individuality provides the best way to life. As Parekh argues

[17] Mark Tushnet, 'Red, White and Blue: A critical Analysis of Constitutional Law' in Rex Ahdar and Ian Leigh, *Religious Freedom in the Liberal State* (Oxford: OUP, 2015), p. 54.
[18] This is the case of some religious minorities such as Orthodox Jews or practicing Muslims. This is apparent in their sense of dress which tends to create a group identity where every individual looks the same and therefore only exists as part of the group.
[19] See for instance the ban on religious symbols at schools in France, which is discussed in Bacquet *supra* note 1, ch. 5, see also Annabel Inge, *The Making of a Salafi Muslim Women* (Oxford: OUP, 2017) and Agnès de Féo, *Voile Interdit* (Paris: Armand Colin, 2020).

this conception fails to acknowledge that it is possible for people to be happy without necessarily adopting the liberal autonomous way of life.[20]

The second common feature, rationalism implies that primacy is given to reason over feelings, emotions and superstition that characterise religion. Cook comments that liberalism has a 'structural bias' against religious knowledge.[21] This is not surprising given that liberalism emerged post enlightenment when there was an emphasis on the discord between faith and reason. Rationalism therefore prioritises authority and evidence and presents religion and beliefs as being backwards. This trend is very visible within the French model which promotes a militant form of secularism (*laicitée*) where religion is relegated to the private sphere and has no place within the public domain.[22]

The third common feature, neutrality[23] means that the liberal state sees religion as one of the many conceptions of the good and not as something sacred and superior which should be given special treatment. While on the face of it this seems to be a reasonable approach for modern liberal states where one can expect genuine and cogent non-religious belief to receive the same level of protection than religious belief, it may in some instances prevent a state from formally accommodating religious belief, resulting in some inequalities. This also goes against the views of some believers who see their faith as central to their lives. This is evident in states which adopt a strict neutrality model such as France, Belgium or the United States.[24] The strict separation of church and state in those countries, coupled with the principle

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[20] Bikhu Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory* (London: Red Globe Press: 2006), p. 105.
[21] Anthony E. Cook, 'God Talk in a Secular World' in Ahdar and Leigh, *supra* note 17, p. 55.
[22] See further Bacquet *supra* note 1, ch. 5.
[23] While neutrality is common to many conceptions of liberalism it is not always the case – see for instance Raz and his perfectionist liberalism. See further Steven Wall, 'Neutralism for Perfectionists: The Case of Restricted Neutrality',120: 2 *Ethics* (2010), pp. 232–256.
[24] For an in-depth study of the French and US systems see further Bacquet *supra* note 1, chapters 5 and 7.

of neutrality mean that any accommodation of a particular group would be considered as special treatment and therefore in breach of strict neutrality. As a result of the lack of accommodations however, religious believers may be forced to make choices between obeying the law of God or the law of the State.

The fourth common feature is the privatisation of religion. This is directly linked to the third common feature. If the state is 'neutral' then there is no place for religion in the public domain. Religion therefore becomes a private matter hence a preference for secularism rather than establishment models of church/state relations. This is problematic as it can be perceived as an attempt to silence or hide minorities for whom displaying their faith in the public sphere is a fundamental aspect of the faith. We can clearly see here how manifestation of belief in the public sphere becomes a salient issue in liberal states as this approach creates tensions between the majority and minorities and perpetuate an 'us' against 'them' narrative. The extent to which states can be neutral however is questionable and many scholars have accused liberalism of being biased towards secularism and against religion. Gedicks for instance sees the relegation of religion to the private sphere 'as an exercise in power'[25] while Gaus comments that 'the liberal secular tendency to equate public reason with secular reason needlessly alienates those with strong religious commitments who might otherwise be supportive of liberalism.'[26] Ahdar and Leigh talk about 'the mirage of neutrality'[27] and are critical of a secularist liberalism.[28] The French State's claim to neutrality for instance is highly questionable as its militant secularism favours non-religious over religious views[29] - this can be termed the

[25] Frederick M. Gedicks, 'Public Life and Hostility to Religion' in Ahdar and Leigh, *supra* note 17, p. 68.
[26] Gaus, G. F., 'Religious Belief in Public Reason Liberalism' in Ahdar and Leigh *ibid*.
[27] Ahdar and Leigh, *supra* note 17, p. 17.
[28] *Ibid* and see also Rex Ahdar, 'Is Secularism neutral?' 26:3 *Ratio Juris* (2013), pp. 404-429.
[29] See further Bacquet, *supra* note 1, ch. 5.

secular bias. This however is not true of all secular countries, the American secularism for instance is more benevolent towards religion, but its neutrality is also questionable as it tends to lean more towards religious than secular views.[30]

The extent to which liberalism is compatible with religious manifestation in the public sphere therefore very much depends on states' interpretations of the various elements which contribute to a liberal state. It appears then that liberalism is more suited to discreet and private forms of religions which do not have a strong emphasis on manifestation. In modern pluralist societies where diverse faith communities coexist this represents a major challenge and has been amply evidenced within the courts.[31]

3. Manifestation of Belief in the courtroom

3.1 The religious vs secular binary

The degree to which manifestation of religion and belief warrants the protection of the law is dependent on a number of factors to be determined by the courts. These include the extent to which the manifestation in question fits within the 'legal definition of religion and belief';[32] whether there is an 'intimate link' between the religion or belief in question and the disputed manifestation; whether religious freedom has been restricted and finally the extent to which the limitation placed on the right to religious freedom can be justified by the exigencies of the situation or as provided by law. In answering those questions, judges across the world often find themselves having to interpret the meaning of religious symbols and/or having to decide whether a practice

[30] This is discussed in Bacquet *ibid*, ch. 7.
[31] See for instance Anthony Bradney, *Law and Faith in a Sceptical Age* (Abingdon: Routledge, 2009); Sullivan, *supra* note 15 and Peroni *supra* note 12.
[32] I refer to a 'legal definition' in inverted commas because there isn't as such a clear legal definition of religion but rather attempts for the law to define certain phenomena as religious for such purposes as tax relief under charity law, non-discrimination, religious freedom etc. The difficulty of defining religion is discussed further below in section 3.2. See also Bacquet *supra* n. 1 chapter 2.

is indeed a manifestation of a particular religion or belief.[33] This practice fits in a secular vs religious binary where manifestation is either classified as 'secular' or 'religious.'

As a result of this approach, manifestation of belief that was deemed by the courts as non-religious has at times been rejected giving a message to followers that it may not be worthy of protection[34] while some religious symbols have been classed as 'cultural' in order to garner the acceptance of the secular state.[35] The problem with this approach is that judges may be perceived as arbiters of faith attempting to assign 'a true' meaning to symbolic representation. As put by Scharff, methods of judicial interpretation are disconnected from the very essence of symbols. While lawyers are in search for a single or true meaning, symbols are based on cultural assumptions and are context dependant.[36] In other words, symbols may mean different things to different people at different times. Any attempt therefore by the courts to attribute a 'true meaning' to a symbol has the potential to exclude those who do not align with this interpretation. In that sense, the secular vs binary approach leads to a hierarchy of symbols[37] where some are more important (worthy of protection) than others.

The European Court of Human Rights (ECtHR), following the margin of appreciation doctrine has often sided with member states in article 9 cases concerning manifestation of belief in the form of clothing or head covers.[38] Strasbourg has generally adopted a broad interpretation of religion and belief therefore avoiding

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[33] This has happened in the UK in a series of cases about manifestation of belief at school. Those are discussed below in this section as well as section 4.2.2. Similar patterns have also emerged in the US & France. See further Bacquet, *supra* note 1, chapters 5 and 7.
[34] See for instance in the UK the cases of *R (Playfoot) v Governing Body of Millais School* [2007] EWHC 1698 (Admin) and *Eweida* v. *British Airways plc* [2010] EWCA Civ 80 CA even though the latter was later overturned by the European Court of Human Rights.
[35] *Lautsi and Others* v. *Italy* (App no. 30814/06) 18 March 2011.
[36] Scharff, *supra* note 1 at p. 41.
[37] By symbol I refer to a visible artefact which is worn or displayed with the intention to manifest a faith or belief whether in private or in the public domain.
[38] See further: ECtHR, Religious symbols and clothing. (2018): https://www.echr.coe.int/documents/fs_religious_symbols_eng.pdf , 12 July 2021.

getting caught up in a religious argument as to the sincerity of the adherents' belief. However, the use of a wide margin of appreciation has led the Court to uphold states' limitations of religious display in the public sphere.[39] As argued by Martínez-Torrón, this may be perceived as a 'tendency to apply a distorted notion of State neutrality' thereby 'legitimizing restrictions of individual expressions of religious beliefs.'[40]

In the United States (US) judges have had to decide whether a particular display serves a religious or secular purpose to ensure compliance with the Establishment Clause and this has given rise to many inconsistencies.[41] French courts have been in the same position in relation to the display of religious symbols in the public sphere where they have had to decide whether a particular display could be perceived as ostentatious and therefore in breach of the neutrality principle.[42] In the UK, courts initially adopted a very narrow reading of article 9 which led them to deal with cases on the basis of interference with article 9 rather than considering whether the limitation placed on the right was indeed justified.[43] UK courts have also interpreted article 9(2) as requiring manifestation of belief to be a requirement of the faith in order to attract the protection of the law.[44] While in 2013, Strasbourg's decision in *Eweida v UK*[45] corrected the flawed approach taken by UK courts in previous case law, it is difficult to fully assess the extent to which *Eweida* continues

[39] See for instance: *Dahlab* v. *Switzerland* (Application No. 42393/98, ECHR 2001) or *Sahin* v. *Turkey*, (Application no. 44774/98, ECHR 2005).
[40] Javier Martínez-Torrón, 'Freedom of Religion in the European Convention on Human Rights Under the Influence of Different European Traditions', *Universal Rights in a World of Diversity* – The Case of Religious Freedom, 17 *Pontifical Academy of Social Sciences*, (2012), 0. 342 http://www.pass.va/content/dam/scienzesociali/pdf/acta17/acta17-martineztorron.pdf, 12 July 2021
[41] See for instance the cases of *Lynch* v. *Donnelly* 465 US 668 (1984) and *County of Alleghany* v. *ACLU 492 US 573* (1989).
[42] CAA Nantes, 13 oct. 2015, département de la Vendée, n.14NT03400; CAA Paris, 8 nov. 2015, Fédération départementale des libres penseurs de Seine-et-Marne, n.15PA00814, para 4 ; CE, 9 novembre 2016, Fédération départementale des libres penseurs de Seine-et-Marne, décision n.395122, para 5.
[43] See for instance *R (Begum (by her Litigation Friend, Rahman))* v. *Headteacher and Governors of Denbigh High School* [2006] UKHL 15.
[44] See for instance *Playfoot*, *supra* note 34.
[45] *Eweida and Others* v. *The United Kingdom*, (Apps nos 48420/10, 59842/10, 51671/10 and 36516/10) 15 January 2013.

to be applied in cases concerning manifestation of belief, partly because there has been a decline of such cases. As noted by Sandberg, 'in most cases, *Eweida* has been cited rather than applied.'[46] In *Core Issues Trust* v. *Transport for London*[47] for instance *Eweida* was cited despite the court then deciding that article 9 was not engaged.[48] In the more recent case of *Sethi* v. *Elements Personnel Services*[49] however, *Eweida* was applied leading to a finding of indirect discrimination when a Sikh man was refused a job at a hotel due to a 'no beard' policy. The Employment Tribunal accepted that the claimant's beard was 'intimately link' to his belonging to the Sikh faith[50] despite him not being a baptised Sikh.[51] This is a much welcome development, but it remains to be seen how other religious signs will be categorised in future cases.

The legal approach therefore rests on a religious vs. secular binary leading to the exclusion of practices which may not fit in with a liberal conception of religion and belief. This has affected the most visible forms of religious manifestation particularly within the Muslim, Sikh and Jewish minorities but there have also been cases concerning Christian symbols in instances of clashes with secularism and/or neutrality.[52]

In order to depart from this secular vs. binary approach I propose a more holistic perspective to manifestation of belief which would move away from looking at the manifestation per se and avoid referring to a so-called 'legal definition of religion' by considering other factors such as identity, ethnicity or culture. By shifting the focus away from religion itself, more adequate protection can be offered to those

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[46] Russell Sandberg, 'Cross Words: Eweida v UK and the reformulation of religious freedom' in Renae Barker, Paul Babie and Neil Foster, *Law and Religion in the Commonwealth The Evolution of Case Law* (Oxford: Hart Publishing, forthcoming 2022), ch. 4.
[47] [2014] EWCA Civ 34.
[48] Para 162.
[49] [2019] Case Number: 2300234/2018.
[50] Para 43.
[51] Generally, only baptised Sikhs adhere to the 5Ks.
[52] See for instance the *Lautsi* case, *supra* note 35.

beliefs and practices which go to the core of individual and collective identity but may not fit neatly into the legal categories. This would further Sullivan's argument that it is impossible for the courts to enforce the law on religious freedom without creating a 'legal hierarchy of religious orthodoxy' and that therefore it is time to move away from the right to freedom of religion altogether.[53] Unlike Sullivan however, I do not propose to completely move away from the right to religious freedom as it needs to remain a potent reminder of the fight for freedom from oppressive political regimes. I propose a remodelling of the current approach which would retain the right to religious freedom but reconsider how we define and approach religion in order to ensure more equality in the courts' treatment of manifestation of belief. While it is indeed misguided to attempt to define religion, I argue that it is not completely impossible but that a broad approach which sees religion as one of the many conceptions of the good is preferable than a narrow approach. The identity approach however will be problematic for those who conceive of religion as purely a matter of conscience[54] since it may be seen as undermining their moral obligation.[55]

3.2 The problems with defining religion in law

The difficulties associated with defining religion have been widely documented in the Law and Religion literature[56] yet as pointed out by Sandberg, the law exists to impose boundaries and as such it requires technical definitions of terms.[57] Religion is not exempt from this requirement despite obvious difficulties in providing such a definition due to the elusiveness of religion as a concept. The sensitive and subjective

[53] Sullivan, *supra* note 15.
[54] On the religious argument see further Ahdar and Leigh, *supra* note 17 p.78.
[55] For a full account of the various conceptions of religion see Bacquet supra note 1, pp. 136-146.
[56] See for instance Russell Sandberg, *Religion, Law and Society* (Cambridge: Cambridge University Press, 2014) and Jeremy Gunn, 'The Complexity of Religion and the Definition of "Religion" in International Law', 16 *Harv. Hum. Rts* (2003), pp. 189, 191.
[57] Sandberg, *ibid*., p. 28.

nature of religion means that legal definitions can be seen as imposed upon religion itself – thus inevitably impacting negatively on some followers whose said 'religion' or 'belief' falls outside the scope of the legal definition.

The purpose of a legal definition is to establish boundaries and therefore it has the potential to be both inclusive and exclusive. If religion is defined too narrowly, certain groups, that deem themselves religious may end up being excluded from the protection afforded by the law. On the other hand, if it is defined too widely, there is a risk of undermining religion altogether and opening the floodgates for vexatious claims. Yet, judicial decisions about what constitutes religion can have a very strong impact on the lives of individuals.[58] The purpose of a legal definition therefore is primarily to enable the law to offer protection to individuals as well as deciding whether or not a group is entitled to claim the privileges and exemptions that being legally recognised as a religion confers but if the definition is culturally 'biased' it could create some inequalities with some religions being labelled as 'real' and others 'non-real.' This is why the likes of Sullivan have argued that the right to religious freedom is not workable and that it would be preferable to abandon it altogether given that religious freedom can be protected by other existing rights such as freedom of expression or freedom of association.[59]

Some commentators have even questioned the need for a definition of religion altogether. Gunn for instance highlights the inefficiencies of legal definitions of 'religion' in instances where those definitions are based on particular assumptions. They either incorporate certain political and cultural attitudes towards preferred religions or fail to account for social and cultural attitudes against less favoured

[58] Gunn, *supra* note 56, p. 191.
[59] Sullivan, *supra* note 15; see also Henrik Palmer Olsen and Stuart Toddington, *Architecture of Justice: Legal Theory and the Idea of Institutional Design* (Abingdon: Routledge, 2008).

ones.[60] As a result of those assumptions some religions are classed as 'acceptable' or 'not acceptable' which introduces a bias in legal analysis since it is the law that has the power to dictate what is or is not religion and what is and what is not religious manifestation. In France for instance there is a distinction between 'religions' and 'sects' where the former is deemed lawful, but the latter is considered as dangerous.[61] While this can be helpful in establishing boundaries it has also led to a great deal of inconsistency within the case law.[62] As put by Olivier Roy this practice leads religions to be 'standardised' by legal systems which no longer define religions by their content but legal status. [63] Gunn further argues that defining religion is not helpful to adjudicators because if someone is subject to discrimination or any kind of abuse, it should be irrelevant whether they are a member of something defined as a religion or a cult.[64] From the point of view of protecting religion however it makes sense to establish some boundaries to avoid opening the floodgates to vexatious claims. There has been an attempt to do this with belief under discrimination law with the test developed by the UK Employment Tribunal in *Grainger PLC* v. *Nicholson*[65] but the case law that ensued produced a number of inconsistencies[66] and led tribunals to consider the worth of a particular belief rather than focusing on the alleged discrimination.

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[60] Gunn, *supra* note 56, p. 195.
[61] See Circulaire du Premier ministre du 27 mai 2005 relative à la lutte contre les dérives sectaires. JORF n°126 du 1 juin 2005 page 9751. While cults (sects) are not legally defined due to the principle of Laïcité, a list of criteria has been established by various Parliamentary groups in order to identity sectarian practices. These include mental destabilisation, indoctrination of children, high financial exigencies, public disorder. [online] Available from: https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000809117&fastPos=1&fastReqId=1732374811&categorieLien=id&oldAction=rechTexte, 3rd September 2021.
[62] See for instance the debate around Jehovah witnesses in France which are considered as part of a cult despite the ECHR having ruled to the contrary in 2011 in *Affaire Association les Témoins de Jéhovah* c. *France* 30/09/2011.
[63] See further Olivier Roy, *Holy Ignorance: When Religion and Culture Diverge* (Oxford: OUP, 2013), p. 25.
[64] Gunn 2003, *supra* note 56, p. 199.
[65] UKEAT 0219/09/0311.
[66] See further Russell Sandberg, 'Is the National Health Service a Religion?' 22 *Ecclesiastical Law Journal* (2020), p. 343.

In this context, the next section looks at the extent to which a holistic approach focussing on identity rather than religion alone can overcome the definition issue and resulting difficulties in case law.

4. Towards a holistic approach to manifestation of belief

4.1 Recognising religion as an element of identity

Rather than classifying manifestation of belief as either religious or secular, fitting or not fitting within a specific definition, I put forward an approach which considers religion and religious manifestation as an element of individual and collective identity.[67] Before discussing the merits of such an approach, it is necessary to first explain what I mean by identity. I conceive of identity as the combination of markers and beliefs that differentiate a person or a group from another. This includes for example culture, religion, race, ethnicity, nationality, language etc. In other words, it is the answer to the question: 'Who am I?'[68] Identities are related to the uniqueness of the individual (individual identity) and/or to the specificities of a group (collective identity). Modern identities tough are complex and the result of both achieved and ascribed components. Hall talks about 'self-conscious identities'[69] where people play an active role in the formation of their identities while Modood describes modern identities as 'impure, hybridic, fluid and varied.'[70]

Recognising religion as an element of identity allows manifestation of belief/symbols to be regarded as integral to a person or a group rather than merely a religious requirement or on the other hand a secular artefact. This approach allows us

[67] See Bacquet in Sandberg, *supra* note 4 ch. 7.
[68] See further David Myers, *Social psychology* (New York: McGraw-Hill Higher Education, 2009) p. 5.
[69] Stuart Hall, 'New Ethnicities' in J. Donald and A Rattansi (eds.) *Race, Culture and Difference* (London: Sage, 1992), pp. 252-259.
[70] Tariq Modood, Essays on Secularism and Multiculturalism, (London: Rowan & Littlefield, 2019) p. 156.

to move away from the secular/religious narrative discussed above and instead focus on individuals as members of their community. Such an approach requires holism as religious identity cannot be understood in a vacuum but requires a consideration of several factors such as race, ethnicity, gender, family life, expression as well as religion. A holistic approach to manifestation of belief therefore looks at symbolic manifestation within the wider environment rather than in a vacuum.

The emergence of religion as an intrinsic aspect of identity rather than an elective characteristic of individuals or purely a matter of conscience has slowly gained recognition from scholars who work in the field.[71] As put by Modood, 'people are active in identity formation' and the lines between the 'ascribed' and 'achieved' aspects of identity formation are becoming increasingly blurry. We can no longer assume for instance that while race is ascribed, religion is a choice.[72] In the UK, this is reflected in the legislation, with the Equality Act 2010 which lists religion alongside the other protected characteristics such as sex, gender, age, race or disability.[73] There is evidence to support a shift in approach from seeing religion as a chosen characteristic to an aspect of identity which is innate.[74] I have argued elsewhere that religiosity of an individual is both acquired through birth status (ascribed) and developed throughout upbringing and family history (achieved) and that in some cases manifestation of belief through religious symbols or rituals are to be considered as intrinsic characteristics of individuals.[75] The Sikh turban is a good example of a religious symbol that believers consider as part of their body.[76]

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[71] See for instance Anthony Bradney, 'Faced by Faith' in Peter Oliver, Sionaidh Douglas-Scott and Victor Tadros, (eds.), *Faith in Law*, (London: Bloomsbury, 2000) ch. 5; Avigail Eisenberg., 'Religion as Identity', 10(2) *Law & Ethics of Human Rights* (2016), pp. 295–317; Steward Harrison Oppong, 'Religion and Identity', 3:6 *American International Journal of Contemporary Research* (June 2013), pp. 10-16. See also Jivraj, *supra* note 8.
[72] Modood, *supra* note 70.
[73] See the Equality Act 2010 S. 4.
[74] See further Bacquet, supra note 4, p. 113.
[75] *Ibid*.

Eisenberg has discussed how understanding religion as identity as opposed to religion as choice affects public decision making about religious freedom.[77] While she acknowledges that the identity framework just as the choice one is imperfect, she nonetheless posits that the identity approach is more effective at 'tracking social exclusion and historical injustice towards groups.'[78] With religion as identity there is a greater impetus for the state to respect religious manifestation whereas with religion as choice the focus is on removing any barriers which prevent the individual from choosing their religion and the way they manifest their belief.[79] The French *laïcité* is a classic example of a state that considers religion purely as a matter of conscience and it goes a step further in actively seeking to ban practices which it sees as potentially restricting the choice that the individual ought to have as an autonomous being. In that approach religion as identity is lost and many religious minorities are left with choosing between protecting the law of the state or following the law of God. As a result of this overly simplistic and binary understanding of autonomy, minorities are discriminated upon and not afforded the recognition they should expect from a democratic society.[80]

As Jivraj comments, this conceptualisation of religion linked to identity and community has not yet been fully explored despite its importance to understanding contemporary religion.[81] In fact, this understanding of religion and of manifestation of belief is at the core of adopting a 'holistic approach' which the next section discusses.

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[76] Bacquet, *supra* note 4, p. 118.
[77] Eisenberg, *supra* note 71.
[78] *Ibid.*, p. 309.
[79] Eisenberg *Supra* note 57, p. 296
[80] There is ample literature on this aspect of the French system in relation to the courts' approach to the Islamic headscarf. See for example Joan Wallach Scott, *The Politics of the Veil* (Princeton: Princeton University Press: 2007). In relation to the ECtHR approach see Anicée Van Engeland, 'What if? An Experiment to Include a Religious Narrative in the Approach of the European Court of Human Rights', 7 *Journal of Law, Religion and State* (2019), pp. 213-241.
[81] Jivraj, *supra* note 8, p. 23.

4.2 The Holistic Approach

This section elaborates on what I call a 'holistic approach' to manifestation of belief and considers two key aspects namely a theoretical and a practical standpoint.

4.2.1 Theoretical standpoint

As discussed above, courts have a tendency to perceive religion as a matter of choice. This is in line with the 'liberal law of religion' which greatly values the right of the individual as an autonomous being, able to make choices about their religion. This approach however, based on individual autonomy, wrongly assumes that every individual has equal opportunities in relation to religious freedom. This perspective also makes a number of assumptions about religion and belief more generally. It considers religion as an elective characteristic of the individual rather than an inherent element of identity alongside race, ethnicity, or gender or as solely a matter of conscience for which the individual ought to take responsibility.[82] This perpetuates misconceptions about manifestation of belief and portrays religious symbols and rituals as non-essential artefacts which can easily be separated from belief. Belief therefore in the eyes of the legislator and the courts takes precedence over manifestation. While this is less likely to be an issue with Christianity which is the majority faith in Western democracies it has the effect of disadvantaging religious minorities such as Muslims, Jews or Sikhs for whom belief and manifestation cannot be separated and whose followers can usually be identified by their dress.

As put by Ahdar and Leigh, the dominant position is one of suspicion towards what they call 'strong religions' with 'serious manifestation' of belief.[83] This is particularly salient in respect of Islam and more visible religious garbs generally.[84] In

[82] See further Seglow's theory *supra* note 2.
[83] Ahdar and Leigh *supra* note 17 at p. 12.
[84] There is ample literature on the struggle of Muslim women to be allowed to don their headscarf in the public sphere and more particularly within the education and employment context. The European

that respect I agree with Eisenberg who points out that 'the role of the court is not to question whether individuals are free to choose, but rather to accept the individual's religious commitments as given and then to ask whether the state treats individuals with these commitments with equal respect.'[85] The claim here therefore is not for religion to be given special treatment but rather equal treatment because it is neither more nor less important than other characteristics which form part of an individual's identity.

While some judges have warmed to this approach,[86] the dominant perspective remains the 'choice approach' arguably because legal methods have not provided us with the tools to understand the meaning and value of manifestation of belief through symbols and rituals. While there is ample academic literature on the problematic nature of the legal approach to religious manifestation,[87] few have attempted to offer any practical solutions.[88]

In the next section I begin a discussion on how we could start to operate a shift towards a more balanced judicial approach to manifestation of belief through symbols.

4.2.2 Practical standpoint

From a more practical standpoint, I propose that it is time for the courts to adopt a more holistic approach to manifestation of religion and belief which shifts focus from the religion or belief per se to the person both as an individual and as a member of the

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Court of Justice ruled on two such cases. See *Achbita & Anor* v. *G4S Secure Solutions NV* [2017] CJEU C-157/15 and *Bougnaoui and ADDH* v. *Micropole SA* [2015] CJEU C-188/15.

[85] Eisenberg, *supra* note 71 at p. 308.

[86] See for instance the minority in *Begum*, *supra* note 43.

[87] See for instance Scharff, *supra* note 1; see also McCrudden, *supra* note 1; Sandberg, *supra* note 46; Bacquet, *supra* note 1.

[88] In relation to school see notably Dianne Gereluk, *Symbolic Clothing in Schools* (London: Continuum 2008); see also Paul Horwitz' 'constitutional agnosticism' in Ahdar and Leigh, *supra* note 17 at p. 13.

community. This approach is ‘holistic’ because it is above all contextual and looks at individuals and their symbols within the wider environment rather than in a vacuum. With this method, the object of focus would move from the manifestation itself or the disputed symbol or ritual to the individual and the extent to which wearing a particular artefact or performing a particular ritual is part and parcel of their identity both as an individual and as a member of the community. Admittedly, in an era where we question the impact of ‘identity politics’ on society, this approach may be seen as further encouraging this trend, but this is beyond the scope of this paper.[89]

In order for this ‘holistic approach’ to operate in practice, a modification of existing legal tests would be required so as to give effect to a more human and inclusive method. Currently, the test used by the ECtHR which is also the test used by UK courts focuses on the extent to which the right to freedom of religion and belief (article 9) is engaged, whether there has been a restriction placed on that right and the extent to which that restriction can be justified, taking into account the nature and purpose of the restriction. It is the first two limbs of the test which are the most problematic and which run the risk of judges becoming arbiters of faith. The holistic approach would instead question the extent to which a particular action, ritual or symbol forms part of a person’s identity. The test would ask whether the manifestation is ‘closely related’ to the person’s identity, not just from a religious perspective but considering all aspect of the individual such as race, ethnicity, family life, expression and culture.

There is a very fine line between religion, ethnicity and culture and manifestation of belief should be a matter for individuals to decide according to their interpretation of religious and non-religious beliefs. The concept of modesty for

[89] On the identity politics debate see further Alicia Garza, ‘Identity Politics: Friend or Foe?’, 24 September 2019, https://belonging.berkeley.edu/identity-politics-friend-or-foe, 15 December 2021.

instance which is common to many religions has been interpreted very broadly even within the same religion. Modesty is not manifested in the same way by an Orthodox Jewish woman than a modern Orthodox Jewish woman. Within Islam there are also great variations according to whether a woman dons a hijab, a niqab or a burqa. Following this approach would take away the need for the courts to elucidate whether a particular symbol is indeed a manifestation of the belief in question and therefore also move away from the need to define religion or belief altogether. It would mean that the threshold is lower than current standards and lead to a more inclusive approach to manifestation of belief which excludes neither the religious nor the secular. The discussion would then hinge on the extent to which the restriction placed on the manifestation was justified in the circumstances.

This approach may be rejected by religionists on the ground that it would dilute the protection offered to religion per se. Religion with this approach is not deemed to be needing special treatment but rather seen as one of the many important aspects of identity meriting protection. However, it has the potential to protect actions inspired by religion regardless of whether they are considered to be a requirement and it is also inclusive of practices which are inspired by culture rather than religion alone such as the wearing of long braided hair for instance.[90]

Presumably the only manifestation of belief that would be excluded from the protection of the law is that which is seen to contradict the object and purpose of the ECHR. In that sense the holistic approach goes hand in hand with Strasbourg's approach which considers most beliefs to be within the ambit of the convention.

[90] See the US case of *New Rider v Board of Education of Independent School District* No 1 414 US 1097 (1973) or in England *G* v. *St Gregory's Catholic Science College* [2011] EWHC 1452 (Admin).

Article 9 embraces freedom of thought, conscience and religion. The atheist, the agnostic, and the sceptic are as much entitled to freedom to hold and manifest their beliefs as the theist. These beliefs are placed on an equal footing for the purpose of this guaranteed freedom. Thus, if its manifestation is to attract protection under article 9 a non-religious belief, as much as a religious belief, must satisfy the modest threshold requirements implicit in this article. In particular, for its manifestation to be protected by article 9 a non-religious belief must relate to an aspect of human life or behaviour of comparable importance to that normally found with religious beliefs.[91]

In addition, the Employment Appeal Tribunal in the recent decision of *Forstater* v. *CGD Europe & Ors*[92] confirmed that it is only in extreme cases involving the gravest violation of other Convention rights that the belief would fail to qualify for protection at all.[93]

As discussed above, domestic courts have been more restrictive in their interpretation of what falls within the scope of religion and belief. It is hoped that using the 'closely related' test would mean that courts would be more willing to acknowledge that there has been an interference with religious freedom.

It is interesting to consider whether this approach would have changed any of the decisions on symbols which have been made to date.[94] In *Eweida v British Airways plc*[95] for instance it was first held by a UK employment tribunal following advice from religious experts, that the visible display of Nadia Eweida's cross was not

[91] *R* v. *Secretary of State for Education and Employment* UKHL 15 [2005] 2 A.C. 246. Para 24.
[92] *Forstater* v. *CGD Europe & Ors* [2021] UKEAT/0105/20/JOJ.
[93] Para 70.
[94] While some of the decisions I discuss in this paragraph are now dated, they have contributed to shaping judicial approaches to religious manifestation in the UK and therefore remain landmark decisions within the field.
[95] Above note 45.

a requirement of the Christian faith. Here we have a 'secular' tribunal declaring that clearly some symbols are more important than others as well as openly siding with the religious experts and therefore implying that there is only one way of practicing ones' faith. Further up, the Court of Appeal of England and Wales refused to consider article 9 altogether referring to the 'specific situation rule'[96] and the contractual relationship between Ms Eweida and her employer British Airways. The decision was eventually overturned by the ECtHR which found a violation of article 9 and accepted that Ms Eweida's behaviour was indeed a manifestation of her religious belief as well as acknowledging that '[Her] *desire to manifest her religious belief … is a fundamental right: because a healthy democratic society needs to tolerate and sustain pluralism and diversity; but also because of the value to an individual who has made religion a central tenet of his or her life to be able to communicate that belief to others.*'[97] Strasbourg's decision in this case is a major step forward in acknowledging the importance of manifestation of belief but unfortunately in matters of religious freedom is one of the rare cases where the ECtHR overruled the decision of a member state. Cases like *Eweida* therefore remain an exception.[98] Applying the holistic approach here would have meant that the case might have been resolved at the Employment Tribunal. Ms Eweida's cross was a manifestation of her desire to manifest her Christian identity and whether the cross is or isn't a requirement of Christianity is not a debate to be had by the courts. It made no sense for the courts to become concerned with theological issues regarding the Christian faith. Considering

[96] See *Kalaç* v. *Turkey* (1997) 27 EHRR 522, Para 27 and Begum *supra* note 43 at para 23 "*The Strasbourg institutions have not been at all ready to find an interference with the right to manifest religious belief in practice or observance where a person has voluntarily accepted an employment or role which does not accommodate that practice or observance and there are other means open to the person to practise or observe his or her religion without undue hardship or inconvenience*" per Lord Bingham.

[97] *Supra* note 45 at para 94.

[98] On the ECtHR and the consequences of applying the margin of appreciation see further Cumper and Lewis, *supra* note 1.

that Mrs Eweida was a Christian and that the cross is a known symbol of the Christian faith it made no doubt that the wearing of the cross was part of her identity as a Christian even if this is not strictly speaking a religious requirement.

Similarly, in *R (Playfoot)* v. *Governing Body of Millais School*[99] the High Court of England and Wales refused to acknowledge that Miss Playfoot's purity ring could be a manifestation of her belief in chastity before marriage while in *R (on the application of Watkins-Singh)* v. *Governing Body of Aberdare Girls' High School*[100] Sarika Singh's kara bangle was seen as a requirement for baptised Sikhs and as such it could attract the protection of the law. Moreover, in the famous *Begum* case[101] the House of Lords at least accepted that article 9 of the ECHR was engaged but was still not prepared to admit that the restriction by the school to allow Shabina to wear a jilbab represented an interference with her right to manifest her belief[102] therefore questioning the sincerity and centrality of the claimant's belief. The inconsistency created by those judgements seems to create a hierarchy of symbols whereby some are deemed more worthy of protection than others.

In the recent case of *Sethi*[103] the Employment Tribunal found that the 'Claimant's manifestation of his religious belief through Kesh [the requirement that the hair of the body not be cut] plainly meets the threshold of engaging his rights under Article 9 of the ECHR.' The Tribunal relied on evidence presented in the earlier case of Watkins-Singh about the importance of the 5Ks. While in this case the Tribunal ruled in favour of the Claimant, this case demonstrates that the tendency for

[99] [2007] EWHC 1698
[100] [2008] EWHC 1865 (Admin).
[101] *Supra* note 43.
[102] For a critique of this series of cases see further Sylvie Bacquet, 'School uniforms, religious, symbols and the Human Rights Act 1998: the 'purity ring' case,' 9 (1) *Education Law Journal* (2008), pp. 11-18 and Sylvie Bacquet, 'Manifestation of Belief and Religious Symbols at School: Setting Boundaries in English Courts' 4 (2-3), *Religion and Human Rights* (2009) pp. 121-135.
[103] *Sethi* v. *Elements Personnel Services Ltd* ET2300234/2018, 12-13 November 2019.

judges to take into account religious tenets in order to assess the extent to which a manifestation of religion deserves the protection of the law is still very much considered to be an important factor despite Strasbourg's judgement in *Eweida*. While using the more holistic approach in this case would not have changed the outcome it would not have sent the message that there is a hierarchy of symbols where only those that are a religious requirement can attract the protection of the law. The Tribunal in Sethi considered evidence that:

The Claimant is a Sikh. He is a Sehajdhary, which means that he is an unbaptised Sikh, but he is a practising Sikh. He prays and meditates. He attends the temple (Gurdwara) weekly when at home. He participates in the practice of food sharing (Lungar). He adheres strictly to Kesh, which is the requirement that the hair of the body not be cut. [104]

The same conclusion could have been arrived at by asking whether the beard forms part of his identity as a Sikh rather than delving into religious doctrine. A Sikh may wear a beard for a number of reasons, and it should not matter whether the person is also a strict practicing Sikh. It is enough that a long beard is an aspect of his Sikh identity like it is for Muslims, Jews and the Amish.

Had the holistic approach been used, the reasoning if not the outcome of all of the above cases would have greatly differed. As they stand, those decisions may lead us to conclude that a kara bangle is a 'true' religious symbol whereas a purity ring and a jilbab are not. A beard worn by a practicing Sikh is worthy of protection by the court but what if Mr Sethi had not been able to show evidence that he was a practicing Sikh?

[104] Para 18.

All those symbols could reasonably be linked to the claimants' identity, religion and culture. This is not to say however that they could not be limited if there was a proportionate justification based on health and safety, harm to others or discrimination but a more holistic approach would at least go some way towards acknowledging religion as an integral part of identity, avoiding the need to define religion as well as enhancing equality. To the same end, Cumper and Lewis have proposed an approach that uses empathy and 'a fresh willingness [for the ECtHR] to 'stand in the shoes' of those who wish to manifest their faith through the religious attire of their choice.'[105]

5 Conclusion

The liberal tendencies of the law of religion therefore have shaped an approach where religion tends to be perceived more as a choice than an integral part of a person's identity. Seeing religion as identity and looking at manifestation of belief in context rather than in a vacuum will go some way towards acknowledging the nature of religious symbols and appreciating the functionality of manifestation of belief in modern pluralist societies.

Judicial approaches to manifestation of belief have tended to reinforce a religious vs secular narrative creating a hierarchy of symbols where some become more worthy of protection than others. In a way this is almost an inevitable consequence of using legal methods of analysis in order to yield a concrete answer which is what judicial personal are trained to do.[106] However, acknowledging that autonomy is not the only consideration to a claim of religious freedom would allow judges to refocus on manifestation of belief as part of identity rather than in its own rights.

[105] Cumper and Lewis, *supra* note 1.
[106] See further Silvio Ferrari, (ed.), *Routledge Handbook of Law and Religion* (Abingdon: Routledge: 2015) p. 4.

I have proposed a shift from the traditional approach which would look at manifestation of belief holistically and consider the context in order to fully appreciate the subjectivity of the belief being manifested. In order to operate this shift though, collaboration between law and other disciplines will be needed as legal methods alone are ill suited to the nature of religious symbols and have proven inadequate.[107] Comparative and interdisciplinary approaches provide a more nuanced and richer way of looking at the topic by acknowledging that individual identity is constructed by drawing on religious and other social values based on race, nationality or ethnicity.[108] Symbols are deeply rooted in these values and should be respected. With this conception, it is individuals' values that need to be protected as a conception of the good rather than religion as a collective endeavour per se.

Until such a shift is operated religious minorities will be left with an 'impossible compromise'[109] that of either abandoning their religious identity in order to fit in with the secular practice of the state or fighting for their religious identity and risk being excluded from society altogether. This is why it is time for a rethink of the current approach.

[107] *Ibid;* See further Russell Sandberg, *Leading Works in Law and Religion* (Abingdon: Routledge, 2019) p. 9 and Sandberg *supra* note 4.
[108] See further Bacquet, *supra* note 1, ch. 2.

[109] Sandberg *supra* note 4 pp. 1-17.