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Comparing law and religion judgments in the rise of judicial populism. The kirpan case-law in Italy and Canada as a case-study *

*Comparare le sentenze in materia di diritto e religione nell'ascesa del populismo giudiziario. Il caso di studio della giurisprudenza sul kirpan in Italia e in Canada **

ABSTRACT: Il saggio esplora il rapporto tra simboli religiosi e populismo giudiziario, concentrandosi sulla giurisprudenza relativa al *kirpan* in Italia e in Canada. In un'epoca di crescente populismo, i simboli religiosi possono essere utilizzati come strumenti di polarizzazione politica e per rinfocolare la narrazione "us-versus-them". La giurisprudenza italiana privilegia le esigenze di pubblica sicurezza rispetto alla libertà religiosa; la giurisprudenza canadese, invece, ammette il porto del *kirpan*, qualora siano soddisfatte alcune condizioni. L'ambiguità giuridica del *kirpan* non solo evidenzia la tensione tra libertà religiosa e sicurezza pubblica, ma anche riflette le sfide poste dalla convivenza di diverse identità in una società multiculturale.

ABSTRACT: This essay explores the intersection of religious symbols and judicial populism, focusing on the case-law related to the kirpan in Italy and Canada. In an era of rising populism, religious symbols become political tools, creating an "us-versus-them" narrative. The kirpan, a Sikh ritual dagger, can serve as a case-study for judicial populism, examining contrasting approaches in Italian and Canadian case-law. Italian case-law prioritizes public safety over religious freedom, while Canadian case-law adopts a nuanced approach, accommodating the wearing of the kirpan under some conditions. The kirpan's legal ambiguity highlights the tension between religious freedom and public safety, reflecting the broader challenges of recognizing different identities in a multicultural society.

SUMMARY: 1. Religious symbols, populism, and judicial populism - 2. Methodology and research questions - 3. The kirpan as a case-study for judicial populism - 4. Judicial populism in action: the Italian case-law - 5. Precautions against judicial populism: the Canadian case-law - 6. Countering judicial populism.

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1 - Religious symbols, populism, and judicial populism

In an era marked by the rise of popular movements and the resurgence of authoritarian regimes, religious symbols have gained heightened sensitivity. Leveraging religion and freedom of religion to gather support, establish credibility, and wield influence has long been a prevalent political strategy. Movements adopting this strategy often mobilize collective identities and religious affiliations by endorsing narratives rooted in the dominant religion, national history, cultural symbols, and shared interests.

Central to the spectrum of these movements is the cultivation of an “us-versus-them” narrative¹, fostering a stark contrast between “the people” - depicted as a homogenous, uncomplicated entity - and “the other” - identified as either corrupt elites or religious minority groups². Amidst this landscape, religious symbols straddle a delicate line, transitioning from embodiments of spiritual significance to markers of distinct identity. Many leaders of these movements leverage religious symbols by oversimplifying the complex spectrum of religious beliefs, lacking nuance and critical thinking³. From Modi’s emphasis on Hindu pride in India to Bolsonaro’s alignment with conservative Christian values in Brazil, populist leaders worldwide resonate with religious symbols to solidify power and engage their political base⁴.

The entwining of populist narratives with religious symbols poses significant risks across various contexts. When employed in politics, this fusion may result in the targeting of religious minority groups⁵. Furthermore, in adjudicating cases related to religious symbols, judicial reasoning may intertwine with populist rhetoric, jeopardizing the constitutionally protected rights of religious minorities.

An often-overlooked variant of populism, known as judicial populism, emerges in the judiciary. In instances dealing with religious symbols, both populism and judicial populism tend to reject the nuanced aspects of pluralist democracy. Populist leaders present themselves as direct spokespersons for the thoughts, grievances, fears, and hopes of

¹ On identity politics see, among many others, **L.P. VANONI, B. VIMERCATI**, *Dall'identità alle identity politics: la rinascita dei nazionalismi nel sistema costituzionale europeo*, in *Quaderni costituzionali*, vol. 40, issue 1, 2020, pp. 31 ff.

² See, among many, **A. ARATO, J.L. COHEN**, *Civil Society, Populism, and Religion*, in *Constellations*, vol. 24, issue 3, 2017, pp. 283 ff.; **J. HAYNES**, *Right-Wing Populism and Religion in Europe and the USA*, in *Religions*, vol. 11, issue 10, 2020, pp. 490 ff.; **J.P. ZÚQUETE**, *Populism and Religion*, in C.R. KALTWASSER, P. TAGGART, P.O. ESPEJO, P. OSTIGUY (eds.), *The Oxford Handbook of Populism*, Oxford University Press, Oxford, 2017, pp. 445 ff.

³ **A. MORELLI**, «Valori occidentali» e principi costituzionali. Il tema identitario nella giurisprudenza in materia di simboli religiosi, in *Democrazia e sicurezza*, issue 2, 2017, pp. 15 ff.

⁴ **D.N. DEHANAS, M. SHTERIN**, *Religion and the Rise of Populism*, Routledge, Abingdon, 2020.

⁵ **S. MANCINI, M. ROSENFELD**, *Nationalism, Populism, Religion, and the Quest to Reframe Fundamental Rights*, in *Cardozo Law Review*, vol. 42, issue 2, 2021, pp. 464 ff.



“the people”, while judicial decisions influenced by judicial populism attempt to interpret the “the true interests and expectations of justice of the people [...] beyond the formal mediation of the law”⁶.

Judicial populism, prevalent in courts, “insists that there are clear, correct answers to complex, debatable problems”⁷. Grounding decisions in a rationale marked by both judicial populism and populist rhetoric “simplifies the issues legal institutions address and claims special access to a true, single meaning of the law”⁸. Consequently, these narratives pose a threat to religious diversity by challenging the values of religious pluralism and hindering dialogue among different religious groups within the same political community⁹.

2 - Methodology and research questions

This essay explores the connection between religious symbols, conceived as a manifestation of freedom of religion or belief, and judicial populism. It focuses on the case study of the carrying of the kirpan, the ritual dagger worn by Amritdhari (initiated) Sikhs, and by comparing two judgments delivered by state secular courts: the Supreme Court of Cassation in Italy¹⁰ and the Supreme Court of Canada¹¹. These two jurisdictions are vastly different. Italy is a civil-law jurisdiction, belonging to the legal landscape of Mediterranean Europe, while Canada is mostly a common-law jurisdiction, with elements of civil law (especially in Québec), exposed to the legal culture of North America and with a history as a former British colony¹².

The juxtaposition of the two rulings provides an insightful process of legal comparison. It allows for the contrasting (with due caution) of

⁶ G. FIANDACA, *Populismo politico e populismo giudiziario*, in *Criminalia*, 2013, pp. 95 ff.

⁷ A. BERNSTEIN, G. STASZEWSKI, *Judicial Populism*, in *Minnesota Law Review*, 2021, vol. 106, issue 1, p. 292.

⁸ A. BERNSTEIN, G. STASZEWSKI, *Judicial Populism*, quoted.

⁹ V. PACILLO, *Sovranismo e libertà religiosa individuale*, in P. CONSORTI (edited by), *Costituzione, religione e cambiamenti nel diritto e nella società*, Pisa University Press, Pisa, 2019, pp. 173 ff.

¹⁰ The Italian Supreme Court of Cassation is the highest court of the Italian system and acts as the ultimate appellate body. It oversees and decides on appeals from lower courts and guarantees the uniform interpretation of the law within the Italian jurisdiction. It does not deliver judgments on the constitutionality of laws, since the judicial review of legislation is an exclusive competence of the Italian Constitutional Court.

¹¹ The Supreme Court of Canada serves as the highest court in the country, providing final decisions on appeals from provincial and federal courts; it also interprets the Constitution, resolving legal disputes of national importance.

¹² Canada still has the English monarch as its head of state: see AA. VV., *Canada in the World: Comparative Perspectives on the Canadian Constitution*, edited by R. ALBERT, D.R. CAMERON, Cambridge University Press, Cambridge, 2017; N. TIDRIDGE, *Canada's Constitutional Monarchy*, Dundurn, Toronto, 2011.



two factually similar cases but two exceptionally¹³ different *judicial rationales* (in terms of the reasoning behind one court's decisions). The investigation does not focus primarily on comparing the institutional elements characterizing Italian and Canadian legal orders; rather, it scrutinizes similarities and differences of two judicial orientations and approaches, drawing findings from the judgments' rationales.

On one side, religious law regulates the rights, duties, and statuses of individuals and communities, irrespective of different states secular norms. The diaspora of religious groups in different state jurisdictions has given rise to similar demands for religious accommodations and requests for courts' interventions. This offers a reliable baseline for comparing how secular court judgments approach issues stemming from the application and the adherence to religious law, and respond to the quest for religious accommodation¹⁴.

On the other side, the wearing of the kirpan represents the ideal case study via which to explore two main research questions:

- (i) to verify the presence of manifestations of judicial populism and their potential impact on decisions related to religious symbols;
- (ii) to investigate strategies for formulating judgments on religious symbols that can counteract the surge of judicial populism.

The first question will be addressed through the study of the Italian case-law, while the second one will be explored through the illustration of the Canadian case-law.

3 - The kirpan as a case-study for judicial populism

The kirpan represents a microcosm of contradictions and anxieties lying at the intersection between religious pluralism, judicial populism, and public security¹⁵. It is a ritual dagger imbued with symbolic and religious significance for those practicing Sikhism: it represents resistance to evil, commitment to justice, and protection of the vulnerable. Male and female initiated Sikhs must carry a kirpan, alongside the other sacred "articles

¹³ «Eclatante»: **A. FERRARI**, *L'ospitalità del diritto o dell'impervio cammino della dignità umana*, in *Stato, Chiese e pluralismo confessionale, Rivista telematica (www.statoechiese.it)*, issue 22, 2020, p. 60.

¹⁴ Religious law can be considered as the "independent variable" of the comparison, a factor the legal scholar can control to see how it affects secular courts' responses to requests for religious accommodations. See **R. HIRSCHL**, *Comparative Matters: The Renaissance of Comparative Constitutional Law*, Oxford University Press, Oxford, 2014.

¹⁵ Religious belonging in a multi-cultural society has been developed, among many others, by **AA. VV.**, *Costituzione, religione e cambiamenti nel diritto e nella società*, quoted, **M. D'ARIENZO**, *Le sfide della multiculturalità e la dimensione religiosa*, in **F. ABBONDANTE**, **S. PRISCO** (eds.), *Diritto e pluralismo culturale. I mille volti della convivenza*, Editoriale Scientifica, Napoli, 2015, pp. 45 ff. See also **AA. VV.**, *Pluralismo confessionale e dinamiche interculturali. Le best practices per una società inclusive*, edited by **A. FUCCILLO** e **P. PALUMBO**, Editoriale Scientifica, Napoli, 2023.



of faith”, known as the “five Ks”¹⁶. Kirpans come in various sizes, ranging from small blades to knives that exceed 20 centimeters in length, and even larger, more conspicuous swords¹⁷. The removal of articles of faith is prohibited and their abandonment involves a set of rituals to symbolize remorse and repentance, including specific prayers and community involvement¹⁸.

From a legal perspective, carrying a kirpan is a manifestation of the right to religious freedom by observance, often in public, alone or in community with others. Yet, at the same time, it raises complex legal issues related to the permissibility of this religious practice because of its resemblance to a weapon¹⁹. The ability of a kirpan to cause harm or threat presents a challenge to criminal laws aimed at restricting the possession of weapons to ensure public safety²⁰. This means that the right to carry a kirpan results in very different decisions across the globe. In certain jurisdictions, carrying kirpans is consistent with constitutional protections for religious freedom²¹; in many others, it is subject to various restrictions, or even prohibition, often accompanied by criminal sanctions²².

¹⁶ In 1699, Gobind Singh mandated that all Sikh believers shall carry five objects: The kesh - uncut hair, symbolizing nature; the kangha - a wooden comb, symbolizing discipline; a kara - an iron-made bracelet, symbolizing unity; a kachera - cotton undergarments, symbolizing purity; and the kirpan - a ritual knife or sword, symbolizing resistance to evil: **S.S. JUSS**, *Kirpans, Law, and Religious Symbols in Schools*, in *Journal of Church and State*, vol. 55, issue 4, 2013, pp. 758 ff. See also **S.V. PRAAGH**, *Hijab et kirpan: une histoire de cape et d'épée*, Presses Université Laval, Laval, 2006.

¹⁷ **J. SINGH**, *Symbols (Sikhism)*, in A.P.S. MANDAIR (edited by), *Sikhism*, Springer, Dordrecht, 2017, pp. 422 ff.

¹⁸ **J. SINGH**, *Symbols (Sikhism)*, quoted.

¹⁹ On the interpretation of the kirpan and its semantic transfiguration/transmigration see **M. RICCA**, *Il tradimento delle immagini tra kirpan e transazioni interculturali. Cultura vs competenza culturale nel mondo del diritto*, in E/C, *Rivista dell'Associazione Italiana di Studi Semiotici*, 2013, pp. 1 ff.

²⁰ Many other religious symbols and practices are perceived in terms of public security, such as the wearing of the Islamic headscarf or the use of psychoactive substances for religious rites (peyote or ayahuasca). As to the first aspect (the wearing of the veil), see **R. BARKER**, *Rejecting Security: A Comparative Analysis of the Rejection of Security, Public Safety and Public Order Concerns as a Ground for Restricting Freedom of Religion in Religious Dress Cases*, in T. PAGOTTO, J.M. ROOSE, G.P. MARCAR (edited by), *Security, Religion, and the Rule of Law: International Perspectives*, Routledge, Oxon; New York, 2024. As to the second aspect (the use of psychoactive substances), see **C. WALSH**, *Beyond Religious Freedom: Psychedelics and Cognitive Liberty*, in B.C. LABATE, C. CAVNAR (edited by), *Prohibition, Religious Freedom, and Human Rights: Regulating Traditional Drug Use*, Springer, Berlin; Heidelberg, 2014, pp. 211 ff.

²¹ Constitution of India, Art. 25, explanation I: “The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion”: www.constitutionofindia.net. See, generally, **M. NASEEM, S. NASEEM**, *Religion and Law in India*, Kluwer Law International, Alphen aan den Rijn, The Netherlands, 2020.

²² In 2006 a member of the Danish Sikh minority faced legal consequences for wearing a kirpan in public. The court’s decision concluded that the exercise of religious freedom cannot exempt an individual from being punishment, for the fact of carrying a weapon in public: Eastern High Court of Denmark (*Østre Landsret*), Decision no. U 2007.316 of 2007. See **G. CAVAGGION**, *Diritto alla libertà religiosa, pubblica sicurezza e*



The misalignment between a state's criminal laws within secular jurisdiction and religious laws and duties is generally framed as a culturally motivated offense²³. This arises when religious and cultural background significantly influences an individual's behavior, causing the ultimate violation of criminal laws²⁴. In the case of the kirpan, in particular, carrying a religious symbol that could potentially be harmful constitutes an act steeped in religious and cultural significance. Simultaneously, it breaches those secular criminal laws prohibiting the possession of weapons, resulting in the typical scenario of a dual allegiance dilemma²⁵.

The resurgence of religious fervor and the rise of populism further complicate the delicate balance between safeguarding religious observance and ensuring public safety²⁶. Illiberal agendas frequently adopt a securitization approach toward freedom of religion, depicting minority religious practices as immediate threats to national unity²⁷. Tribunal decisions sometimes prioritize public safety over the spiritual importance of kirpans, as seen in Italian case-law, potentially

“valori occidentali”. Le implicazioni della sentenza della Cassazione nel “caso kirpan” per il modello di integrazione italiano, in federalismi.it, issue 12, 2017, p. 5; di A. SIMONI, La sentenza della Cassazione sul kirpan: “voce dal sen fuggita”?, in Diritto, Immigrazione e Cittadinanza, issue 2, 2017, p. 9.

²³ On culturally motivated crimes, see **F. BASILE**, *I Reati cd. «culturalmente motivati» commessi dagli immigrati: (possibili) soluzioni giurisprudenziali*, in *Questione giustizia*, issue 1, 2017, p. 126; **A. BERNARDI**, *Il ‘fattore culturale’ nel sistema penale*, Giappichelli, Torino, 2010; **P. CONSORTI**, *Reati “culturali” e reati “religiosi”. Un fenomeno di glocalismo giuridico*, in *Diritto e religioni*, vol. 22, issue 2, 2016, p. 353; **C. DE MAGLIE**, *I reati culturalmente motivati: ideologie e modelli penali*, ETS, Napoli, 2010; **E. OLIVITO**, *Giudici e legislatori di fronte alla multiculturalità*, in *Stato, Chiese e pluralismo confessionale*, quoted, 2011, pp. 1 ff.

²⁴ **A. BERNARDI**, *Populismo giudiziario? L’evoluzione della giurisprudenza penale sul kirpan*, in *Rivista italiana di diritto e procedura penale*, vol. 60, issue 2, 2017, pp. 671 ff.

²⁵ See on this **A. LICASTRO**, *Il motivo religioso non giustifica il porto fuori dell’abitazione del kirpan da parte del fedele sikh (considerazioni in margine alle sentenze n. 24739 e n. 25163 del 2016 della Cassazione penale)*, in *Stato, Chiese e pluralismo confessionale*, quoted, issue 1, 2017, pp. 1 ff.

²⁶ On the relation between freedom of religion and security, see **AA. VV.**, *Freedom of Religion, Security and the Law. Key Challenges for a Pluralistic Society*, edited by N. MARCHEI and D. MILANI, Routledge, Oxon, UK; New York, 2023; **R. MAZZOLA**, *La convivenza delle regole: diritto, sicurezza e organizzazioni religiose*, Giuffrè, Milano, 2005; **M. PARISI**, *Diritto alla sicurezza e libertà democratiche: quale (possibile) bilanciamento?*, in *Politica del diritto*, vol. 53, issue 2, 2022, pp. 165-198. On populism in Italy, see **G. MARTINICO**, *Filtering Populist Claims to Fight Populism: The Italian Case in a Comparative Perspective*, Cambridge University Press, Cambridge, UK, 2021. On populism and laicità see **P. CONSORTI**, *Accezioni della laicità in tempi di populismo trionfante*, in *Diritto ecclesiastico*, vol. CXXVIII, issue 1/2, 2017, pp. 117 ff. On laicità, religion, and culture see **M. FERRANTE**, *Diritto, religione, cultura: verso una laicità inclusiva*, in *Diritto ecclesiastico*, vol. CXXVII, issue 3/4, 2016, pp. 425 ff.

²⁷ **A. DE OTO**, *Pratiche di culto ed esigenze di europeizzazione del diritto penale: tra bisogno di libertà e pretese di sicurezza*, in *La Chiesa e l’Europa*, edited by G. LEZIROLI, Pellegrini, Cosenza, 2007, pp. 287 ff.



overshadowing the protection of fundamental rights to freedom of religion or belief²⁸.

The following section will explore how courts may prioritize constitutional concerns for public safety, influenced by arguments rooted in judicial populism.

4 - Judicial populism in action: the Italian case-law

Italian jurisprudence on kirpans is a noteworthy, albeit not extensive, body of case-law. Courts and tribunals have been called upon to rule on issues related to the wearing of kirpan symbols since the late 2000s²⁹. The decision that generated significant public discourse was judgment no. 24084 delivered by the Supreme Court of Cassation in 2017³⁰.

The debate over the carrying of the kirpan in Italy stemmed from two key factors. First, the 2017 judgment marked a shift from previously established Italian jurisprudence³¹. Prior to 2016, a consistent case-law carefully balanced the religious freedom of Sikh adherents to carry the kirpan with the need for public safety. This typically resulted in no sanctions for Sikh individuals who, unfortunately, found themselves embroiled in legal proceedings involving the carrying of the sacred knife³². In particular, prior case-law acknowledged the act of carrying the kirpan as an expression of the right to religious freedom and excused criminal responsibility, recognizing the legal defense commonly referred to as “scriminante”³³. In addition, scholars challenged a specific aspect of the Court’s reasoning as being ambiguous and imprecise³⁴, and, as we will see, for offering a regrettable example of judicial populism³⁵.

²⁸ **F. ALICINO**, *I reati culturalmente motivati fra assimilazionismo e relativismo multiculturale*, in *Stato, Chiese e pluralismo confessionale*, quoted, issue 5, 2022, p. 26: “At the intertwine of criminal law and cultural diversity, [...] it is equally important to never lose sight of the main objective: an effective and efficient guarantee of fundamental rights and freedoms”.

²⁹ See, for example, Tribunal of Cremona (Criminal Section), Decision no. 15 of 2009.

³⁰ Supreme Court of Cassation (First Section), Decision no. 24084 of 2015.

³¹ The case-law moved from being “indulgent”, to “rigorous” to “intransigent”: **A. BERNARDI**, *Populismo giudiziario? L’evoluzione della giurisprudenza penale sul kirpan*, quoted, p. 673.

³² **C. CIANITTO**, *Le minoranze religiose in Italia. Nuovi problemi (?)*, in *Stato, Chiese e pluralismo confessionale*, quoted, issue 5, 2021, pp. 1 ff.

³³ See **A. BERNARDI**, *Populismo giudiziario? L’evoluzione della giurisprudenza penale sul kirpan*, quoted, p. 675.

³⁴ Morelli defined the formula employed as “exemplary in its vagueness and ambiguity”: **A. MORELLI**, «Valori occidentali» e principi costituzionali. Il tema identitario nella giurisprudenza in materia di simboli religiosi, quoted, p. 24.

³⁵ “The risk of judicial populism seems, therefore, to have really materialized in this decision”: **F. BASILE**, *Reati culturalmente motivati*, in *Diritto Penale Contemporaneo*, issue 1, 2019, pp. 98 ff.

Italian scholarship has extensively commented the judgement. Beyond the scholarship quoted and relied on throughout this essay, see in addition: **R. BIN**, *Il problema non è il Kirpan ma la stampa*, *laCostituzione.info*, 2017; **S. CARMIGNANI**



The circumstances leading to the 2017 judgment were straightforward. A Sikh practitioner was convicted for carrying a kirpan in a public place. Local police officers found the man with the kirpan attached to his belt and requested him to surrender the object. The man refused, referring to his identity as a Sikh believer of Indian origin and his religious duty to carry the sacred dagger³⁶. He also alleged that the kirpan was a religious symbol and carrying it amounted to a manifestation of the right to freedom of religion or belief, protected by the Italian Constitution³⁷.

To understand the rationale of the judgment, it is important to contextualize the legal framework regulating the control of weapons, ammunition, and explosives. Italian legislation draws a clear distinction between two categories of weapons³⁸. It prohibits the possession of weapons naturally designed for causing injuries or death, such as firearms or rifles³⁹. Prohibition is absolute unless a valid firearm certificate has been issued by competent authorities⁴⁰. The law also establishes a more nuanced framework for the possession of objects that are not inherently aimed at causing physical harm or threats, but may still have the potential to do so. These include items such as sticks, iron-made objects, chains, and potentially kirpans⁴¹. In this second scenario, prohibition is not absolute: Article 4, para 2, of Law no. 110 of 1975 punishes with criminal sanctions the carrying of such objects outside one's private residence, unless a justifiable reason for carrying such objects exists⁴².

CARIDI, *Ostentazione di simboli religiosi e porto di armi od oggetti atti ad offendere. Il problema del kirpan dei fedeli Sikh*, in *Diritto ecclesiastico*, vol. 120, issue 3/4, 2009, pp. 739 ff.; **M. CARTABIA**, *The Many and the Few: Clash of Values of Reasonable Accommodation Lectures*, in *American University International Law Review*, vol. 33, issue 4, 2017, pp. 667 ff.; **G. MACRÌ**, *Cosa minaccia la società pluralista? C'è ben altro oltre il kirpan*, *laCostituzione.info*, 2017; **M. MADONNA**, *Simboli e segni religiosi nella giurisprudenza della Corte di Cassazione, in dialogo con le altre giurisdizioni*, in *Diritto ecclesiastico*, vol. CXXIII, issue 3/4, 2012, pp. 609 ss; **A.M. NICO**, *Ordine pubblico e libertà di religione in una società multiculturale (Osservazioni a margine di una recente sentenza della Cassazione sul kirpan)*, in *Osservatorio AIC*, issue 2, 2017, pp. 1 ff.; **G. POGGESCHI**, *Quel pugnale vietato a Mantova e permesso a Montreal*, *laCostituzione.info*, 2017; **A. RAUTI**, *"A che punto è la notte?" L'approccio interculturale all'immigrazione fra capacità e accomodamenti*, in *Consulta online*, Studi 2022/I, pp. 266 ff.

³⁶ Supreme Court of Cassation (First Section), Decision no. 24084 of 2015, quoted, paras 1-3.

³⁷ Article 19 of the Italian Constitution states that: "Anyone is entitled to freely profess their religious belief in any form, individually or with others, and to promote them and celebrate rites in public or in private, provided they are not offensive to public morality".

³⁸ See Law 18 aprile 1975, n. 110, "Norme integrative della disciplina vigente per il controllo delle armi, delle munizioni e degli esplosivi".

³⁹ They can be defined as "proper weapons" (in Italian, "armi proprie").

⁴⁰ Art. 4, para 1, of Law 18 aprile 1975, n. 110.

⁴¹ They can be defined as "improper" or "unconventional weapons" (in Italian "armi improprie").

⁴² Art. 4, paras 2 and 3, of the Law 18 April 1975, n. 110: "Without a justifiable reason, no person shall carry, outside of their dwelling or its appurtenances, items such pointed



Despite the defendant's consideration that his kirpan represented a meaningful religious symbol deserving constitutional protection, the Supreme Court of Cassation classified it as a weapon subject to Article 4, para 2, of Law no. 110. Therefore, the Court confirmed the lower court's decision and convicted the defendant for the crime of carrying a weapon without valid justification. In the Court's view, religious freedom cannot trump public safety, and religious grounds are not able to exempt a defendant's conduct from criminal liability⁴³.

It must be emphasized that criminal law is a complex and jurisdiction-specific field. Justifying conducts prohibited by criminal law on religious grounds has limited acceptance within the Italian criminal legal system, and extensive scholarly attention was dedicated to analyzing the technical complexities of the case at stake⁴⁴. In addressing the first research aim of the present paper, which focuses on how decisions influenced by judicial populism may approach religious symbols, it is important to acknowledge that the Italian Supreme Court of Cassation held that:

"It is not acceptable that the adherence to one's own values, even if lawful in accordance with the laws of the country of origin, lead to the conscious violation of those of the host society. A multi-ethnic society is a necessity, but it cannot lead to the creation of conflicting cultural enclaves, stemming from the ethnic groups that compose it. The *unity of our country's cultural and legal fabric* would oppose it, since it identifies public safety as a good to be protected and, for that, prohibits the carrying of weapons and objects intended to cause harm"⁴⁵.

This passage has been criticized on many grounds for being "unnecessary, inappropriate and ill-considered"⁴⁶. First, it shows bias against minoritarian religious beliefs and cultures. Deeming some religious symbols as *prima facie* incompatible with the Italian pluralist constitutional project⁴⁷ amounts to an abstract curtailment of the right to

or sharp-edged sticks, cutting implements capable of causing harm, clubs, pipes, chains, slingshots, bolts, metal balls, or any other item not explicitly categorized as a pointed or sharp-edged implement. [...] Those who violate this prohibition shall be subject to criminal sanctions, including imprisonment for a period of one month to one year and a fine [...]"

⁴³ For a summary and a comment of the decision in English, see **S.C. MONACHINI**, *Culturally Motivated Crimes: The Cultural Test in the Italian Jurisprudence. A Comparative Study*, in *Stato, Chiese e pluralismo confessionale*, quoted, issue 17, 2020, pp. 135 ff.

⁴⁴ Beyond the literature quoted in this essay, see also **A. CHIBELLI**, *La Cassazione e la (ir)rilevanza penale del fattore multiculturale: su kirpan e dintorni*, in *Archivio penale*, issue 2, 2017, pp. 695 ff.; **G. MARTIELLO**, *Fattore religioso e «giustificato motivo» del porto di un coltello: la vicenda del «kirpan» approda in Cassazione*, in *L'indice penale*, issue 3, 2017, pp. 839 ff.

⁴⁵ Italics added. Supreme Court of Cassation (First Section), Decision no. 24084 of 2015, quoted, paras 2.3.

⁴⁶ **E. MAZZANTI**, *Porto non autorizzato di kirpan e conformazione ai valori occidentali: un caso di diritto penale «dalla parte del manico»*, in *Cassazione penale*, issue 12, 2017, pp. 4474 ff.

⁴⁷ **C. CIANITTO**, *Le minoranze religiose in Italia. Nuovi problemi (?)*, quoted, p. 62.



religious freedom. Instead, a delicate and nuanced approach to balancing religious freedom with concerns over public safety would have been preferable⁴⁸. Second, the rationale behind the passage is conceptually rooted in an assimilationist approach that does not align with the foundational principles of the 1948 Constitution⁴⁹.

The protection of pluralism underpinning the Italian Constitution is anchored in many constitutional provisions, including those recognizing and protecting communities, guaranteeing linguistic and cultural diversity, and securing the autonomy of local and regional level of governments. By contrast, conceiving the cultural fabric of the country as uniform severely, as the Supreme Court of Cassation suggests, constrains the space for religious pluralism⁵⁰.

The Court further affirmed that:

“In a multi-ethnic society, coexistence between people of different ethnicities necessarily requires the identification of a common core in which immigrants and host society must recognize each other. While integration does not impose the abandonment of the culture of origin, in consonance with the provision of Article 2 of the [Italian] Constitution, which values social pluralism, the insurmountable limit is constituted by respect for human rights and the legal civilization of the host society. It is therefore essential for the immigrant to align his or her values to those of the Western world, in which he has willingly chosen to integrate”⁵¹.

The statement constitutes another point of criticism because the notion of “indefinite and arbitrarily identifiable Western values”⁵², to which “the immigrant” is expected to adhere, is legally tenuous from several point of views⁵³. First, mandating adherence to specific values rather than mere compliance with established rules runs counter to the democratic principles upheld by Italian constitutional legal order.

⁴⁸ E. MAZZANTI, *Porto non autorizzato di kirpan e conformazione ai valori occidentali: un caso di diritto penale «dalla parte del manico»*, quoted, p. 4481.

⁴⁹ A. MORELLI, «Valori occidentali» e principi costituzionali. Il tema identitario nella giurisprudenza in materia di simboli religiosi, quoted, p. 17. Bernardi described this passage as “particularly marked by the populist assimilationist ideology that has now fully taken root among large swathes of public opinion”: A. BERNARDI, *Populismo giudiziario? L'evoluzione della giurisprudenza penale sul kirpan*, quoted, p. 684.

⁵⁰ G. CAVAGGION, *Diritto alla libertà religiosa, pubblica sicurezza e “valori occidentali”*, quoted, p. 9.

⁵¹ Italics added. Supreme Court of Cassation (First Section), Decision no. 24084 of 2015, quoted, para 2.3. Article 2 of the Italian Constitution reads: “The Republic recognizes and guarantees the inviolable rights of the person, both as an individual and in the social groups where human personality is expressed. The Republic expects that the fundamental duties of political, economic and social solidarity be fulfilled”.

⁵² A. NEGRI, *Religious freedom and inviolable lines in pluralist societies: the case of cultural crimes*, in *Stato, Chiese e pluralismo confessionale*, quoted, issue 30, 2019, pp. 175 ff.

⁵³ On a recent and comprehensive study on migration, human rights and ways to build welcoming communities see C. VENTRELLA (edited by), *La gestione dei flussi migratori. Diritti umani, dinamiche dell'accoglienza e circuiti confessionali*, Cacucci, Bari, 2022.



The law should focus on regulating external behaviors and actions, rather than delving into the internal beliefs or values of those subject to the law itself. Such imposition infringes upon personal freedoms and autonomy, potentially encroaching upon constitutional rights and freedoms, including religious freedom itself⁵⁴. Second, the reference to “the West” does not meet any valid legal definition⁵⁵. It overlooks a significant body of case-law arising from jurisdictions traditionally considered as “Western” stabilized democracies. In contrast to the Italian scenario, many jurisdictions, including the United States⁵⁶, The Netherlands⁵⁷, the United Kingdom⁵⁸, and Belgium⁵⁹, have managed to accommodate the wearing of the kirpan within the right to freedom of religion or belief.

The Supreme Court of Canada adopted a rather different reasoning to the Italian position. In the following section, we will see how the Canadian Court reflected an appreciation for religious diversity and an inclusive pluralist perspective that, at the same time, did not disregard constitutional interest to public safety.

5 - Precautions against judicial populism: the Canadian case-law

Gurbaj Singh Multani was playing at his school in Montreal, when his kirpan accidentally fell onto the school yard. He was a twelve-year-old student who identified as an orthodox Khalsa Sikh, obliged by his faith to wear a kirpan anywhere, anytime. After the incident, his family sought to negotiate with the school principal to secure an accommodation of his

⁵⁴ This holds significant relevance within the Italian constitutional framework. Consider that Article 19 of the Italian Constitution, which regulates freedom of religion, foresees only one explicit limit to the manifestation of religious freedom: religious rites shall not violate public morality. By contrast, earlier legislation, entered into force under the fascist regime, included also that religious principles shall not violate immaterial public order. The framers of the Italian Constitution deliberately opted to discard references to religious principles and immaterial public order, aiming at maximizing the scope of the religious freedom, while minimizing restrictions on the right to engage in religious actions, specifically religious rites. See **AA. VV.**, *Nozioni di diritto ecclesiastico*, edited by G. CASUSCELLI, 5th ed., Giappichelli, Torino, 2015.

⁵⁵ **A. GUSMAI**, «Giustificato motivo» e (in)giustificate motivazioni sul porto del kirpan. *A margine di Cass. pen., Sez. I, sent. n. 24084/2017*, in *Dirittifondamentali.it*, issue 1, 2017, pp. 1 ff.

⁵⁶ *People v. Singh*, 135 Misc. 2d 701, 516 N.Y.S.2d 412 (N.Y. Crim. Ct. 1987); *Cheema v. Thompson*, 67 F.3d 883 (9th Cir. 1995); *State v. Singh*, 117 Ohio App. 3d 381, 690 N.E.2d 917 (Ohio Ct. App. 1996).

⁵⁷ The Netherlands Equal Treatment Commission, Decision no. 1997-24 of 1997. See **G. CAVAGGION**, *Diritto alla libertà religiosa, pubblica sicurezza e “valori occidentali”*, quoted, p. 5.

⁵⁸ Criminal Justice Act of 1988, Art. 139, para 5, and Art. 139A (England and Wales); Criminal Law (Consolidation) (Scotland) Act 1995, Art. 49.

⁵⁹ Court of appeal of Antwerp, Decisions nos. 1204 P 2007 and 1205 P 2007 of 2009. See **G. CAVAGGION**, *Diritto alla libertà religiosa, pubblica sicurezza e “valori occidentali”*, quoted, p. 5.



religious practice. The school board, citing safety concerns, ultimately opted to enforce the school's code of conduct, which prohibited the possession of weapons (including kirpans) on school premises. In a spirit of compromise, the school administrators proposed carrying a symbolic kirpan, made from safe materials such as plastic or wood⁶⁰.

The Multani family's case reached the Supreme Court of Canada, whose judgment diverged significantly from the Italian case, both in terms of outcome and legal rationale⁶¹. The Italian case was focused on whether there was a valid justification for carrying the kirpan in public places, with the aim of verifying if it was possible to exempt the defendant from criminal liability. In contrast, the Canadian Court addressed two primary legal issues⁶². First, it considered whether the school's zero-tolerance policy regarding kirpans infringed Multani's freedom of religion, protected under Section 2(a) of the Canadian Charter of Rights and Freedoms⁶³. Second, it evaluated whether the restriction imposed on the claimant's manifestation of freedom of religion or belief was reasonable and demonstrably justifiable in a free and democratic society, in accordance with Section 1 of the Canadian Charter⁶⁴.

The Court observed that the school's code of conduct, which prohibited all potential weapons on school grounds, was driven by a legitimate concern for safety. However, it assessed the limitation imposed on Multani's religious freedom through the criteria outlined by

⁶⁰ Supreme Court of Canada, *Multani v. Commission scolaire Marguerite-Bourgeoys*, Decision no. 1 S.C.R. 256, 2006 SCC 6 of 2006. For comments, beyond the ones quoted throughout this essay, see in addition: **S. CANAMARES ARRIBAS**, *Religious Liberty and Public Security in the Canadian Juridical Experience Section 2: Studies*, in *Ius Canonicum*, vol. 47, 2007, pp. 527 ff.; **L.G. BEAMAN**, *Just Work It out amongst Yourselves: The Implications of the Private Mediation of Religious Freedom*, in *Citizenship Studies*, vol. 16, issue 2, 2012, pp. 255 ff.; **C.B. CEFFA**, *Sensibilità costituzionale e salvaguardia dei valori giuridici interni nella giurisprudenza italiana in tema di diversità religiosa nel contesto della società multiculturale*, in *Rivista AIC*, issue 4, 2017, 4, pp. 1 ff.; **B. CHANDLER**, *Freedom of Religion: The Supreme Court and the Kirpan*, in *Education in Canada*, vol. 46, issue 3, 2006, pp. 33 ff.; **G.M. DICKINSON**, *Balanced on a Knife's Edge: School Safety Meets Religious Freedom at the Supreme Court of Canada*, in *Education Law Journal*, issue 3, 2006, pp. 171 ff.; **M. WITTEN**, *Rationalist Influences in the Adjudication of Religious Freedoms in Canada Discussion Pieces*, in *Windsor Review of Legal and Social Issues*, vol. 32, 2012, pp. 91 ff.; **H. KISLOWICZ**, *Law, Religion, and Feeling Included/Excluded: Case Studies in Canadian Religious Freedom Litigation*, in *Canadian Journal of Law and Society/Revue Canadienne Droit et Société*, vol. 30, 2015, pp. 365 ff.; **C. PICIOCCHI**, *L'interculturalismo nel diritto costituzionale: una storia di parole*, in *DPCE Online*, vol. 39, issue 2, 2019, pp. 1285 ff.; **C. DARIUS STONEBANKS**, *Secularism and Securitisation: The Imaginary Threat of Religious Minorities in Canadian Public Spaces*, in *Journal of Beliefs & Values*, vol. 40, issue 3, 2019, p. 303 ff.

⁶¹ Supreme Court of Canada, *Multani v. Commission scolaire Marguerite-Bourgeoys*, quoted.

⁶² *Ibidem*, para 13.

⁶³ Canadian Charter of Rights and Freedoms, Art. 2: "Everyone has the following fundamental freedoms: (a) freedom of conscience and religion".

⁶⁴ *Ibidem*, Art. 1: "The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society".



the so-called Oakes test⁶⁵. Under this test, any restriction of a constitutional right is considered as legitimate only if it serves a pressing and substantial objective; if there is rational connection between the restriction and its objective; if the restriction minimally interferes with the right or freedom protected by the Charter; and if there is a proportional balance between benefits achieved by the government's measure and its negative impact⁶⁶. Within the context of this legal framework, the Court recognized that safeguarding public safety is a legitimate aim worthy of legal protection.

Nevertheless, the blanket ban on wearing a kirpan at school was deemed as a disproportionate and unreasonable limitation of the constitutionally guaranteed right to religious freedom. The Court emphasized that the religious accommodation, initially designed and accepted by Multani but later withdrawn by the school principal, was not unconditional, but subject to strict conditions. The kirpan had to be concealed beneath clothing, placed within its sheath, securely wrapped and sewn securely in a safe envelope, and affixed to the guthra, the traditional turban worn by Sikh men⁶⁷.

According to the bench's perspective, this approach represented a practical accommodation that effectively balanced the right to religious freedom with the need to ensure safety. In addition, it stood as the sole means to avert an outcome characterized by religious intolerance:

"A total prohibition against wearing a kirpan to school undermines the value of this religious symbol and sends students the message that some religious practices do not merit the same protection as others. On the other hand, *accommodating* Gurbaj Singh and allowing him to wear his kirpan under certain conditions demonstrates the importance that our society attaches to protecting freedom of religion and to showing respect for its minorities. The deleterious effects of a total prohibition thus outweigh its salutary effects"⁶⁸.

The decision rendered by the Supreme Court is particularly relevant to the context of education and is less dependent on the technicalities of criminal law that were specific to the Italian case. In Canada, schools are notably conceived as a reflection of society and of the larger multicultural community. This perspective encourages

⁶⁵ Supreme Court of Canada, *R. v. Oakes*, CanLII 46 (SCC), 28 February 1986.

⁶⁶ See for comments **R.T. BENTO**, *Oakes Test and Proportionality Test: Balance between the Practical Costs of Limiting Rights and the Benefits Arising from the Law*, in *International Journal of Law and Political Sciences*, vol. 15, issue 5, 2021, pp. 558 ff.; **M. COHEN ELIYA**, **I. PORAT**, *Proportionality and the Culture of Justification*, in *The American journal of comparative law*, vol. 59, issue 2, 2011, pp. 463 ff.; **T. GROPPI**, *Canada*, il Mulino, Bologna, 2006; **P.W. HOGG**, *Constitutional law of Canada*, Carswell, Toronto, 1985; **W.P.M. KENNEDY**, *The Constitution of Canada: An Introduction to its Development and Law - Introduction by Martin Friedland*, Don Mills, Ontario, Canada, 2014.

⁶⁷ Supreme Court of Canada, *Multani v. Commission scolaire Marguerite-Bourgeoys*, quoted, para 8.

⁶⁸ Italics added. *Ibidem*, para. 79.



parents, students, and educators to design an educational environment that mirrors the multifaceted constitutional implications of diversity and pluralism⁶⁹. Apart from these context- and country-specific distinctions, there was a clearly notable difference between the two Courts' judgments.

Multani is often lauded as “an inspiring example of multiculturalism, cultural and legal tolerance in Canada”⁷⁰ for two crucial facets emerging from the judgment: the Court's comprehension of religious identities and its judicial rationale. First, the *Multani* bench made a conscious effort to construct its reasoning while understanding the interplay of the student's multiple identities as both a Sikh believer and as an individual belonging to a secular community⁷¹. In doing so, the Court aligned with contemporary constitutional systems⁷² by acknowledging that the applicant viewed carrying the kirpan as a deeply held religious obligation. While the Italian bench asserted that a person belonging to a religious minority should comply with “the legal civilization of the host society”⁷³, the Canadian Court conveyed a nuanced and sensible understanding of the kirpan, defining it as a religious symbol rather than as a weapon⁷⁴.

Second, the Canadian Court was significantly influenced by factual arguments and contextual analysis, as opposed to relying on the abstract approach taken in the Italian case⁷⁵. While the Italian Court concluded that it is “essential for the immigrant to align his or her values to those of the Western world”⁷⁶, the Canadian Court ascertained not

⁶⁹ A.N. CRAWFORD, *Learning Lessons from Multani: Considering Canada's Response to Religious Garb Issues in Public Schools Notes*, in *Georgia Journal of International and Comparative Law*, vol. 36, issue 1, 2007, pp. 159 ff. See also E. CECCHERINI, *Cittadinanza, immigrazione e integrazione: l'approccio multiculturale canadese in bilico*, in G. CERRINA FERONI, V. FEDERICO (edited by), *Strumenti, percorsi e strategie dell'integrazione nelle società multiculturali*, ESI, Napoli, 2018, pp. 345 ff. For an Italian perspective about the educational environment see E. MARTINELLI, *From Foreigners to Citizens: Freedom of Religion, Education and Policies of Social Integration for Muslim Minors*, in M. HILL, L. PAPADOPOULOU (edited by), *Islam, Religious Liberty and Constitutionalism in Europe*, Hart Publishing, Oxford, 2024.

⁷⁰ S.C. MONACHINI, *Culturally Motivated Crimes: the Cultural Test in the Italian Jurisprudence. A Comparative Study*, quoted, p. 139.

⁷¹ A. SHACHAR, *Multicultural Jurisdictions: Cultural Differences and Women's Rights*, Cambridge University Press, Cambridge, UK, 2001.

⁷² F. ALICINO, *The Collaborations-Relations Between Western (Secular) Law and Religious Nomoi Groups in Today's Multicultural Context: The Cases of France and Canada*, in *Transition Studies Review*, vol. 18, issue 2, 2011, pp. 430 ff.

⁷³ Supreme Court of Cassation (First Section), Decision no. 24084 of 2015, quoted, para 2.3.

⁷⁴ H. KISLOWICZ, *Sacred Laws in Earthly Courts: Legal Pluralism in Canadian Religious Freedom Litigation*, in *Queen's Law Journal*, vol. 39, issue 1, 2013, pp. 175 ff.

⁷⁵ F. CRÉPEAU, *Canadian Multiculturalism in Question: Diversity or Citizenship?*, in A. REA, I. RORIVE, D. SREDANOVIC, E. BRIBOSIA (edited by), *Governing diversity: Migrant Integration and Multiculturalism in North America and Europe*, Bruxelles, Editions de l'Université de Bruxelles, Bruxelles, 2019, pp. 107 ff.

⁷⁶ Supreme Court of Cassation (First Section), Decision no. 24084 of 2015, quoted, para 2.3.



only that Mr. Multani had no prior history of displaying violent behavior at school, but also that “over the 100 years since Sikhs have been attending schools in Canada, not a single violent incident related to the presence of kirpans in schools has been reported”⁷⁷.

The Court finally emphasized that even if the kirpan were worn by Multani under the conditions set forth by the school’s administrators, its potential for causing harm would be exceptionally limited. As the Court put it, “a student who wanted to commit an act of violence could find another way to obtain a weapon, such as bringing one in from outside the school” or obtaining one easily at school “such as scissors, pencils and baseball bats”⁷⁸.

6 - Countering judicial populism

In jurisprudence, certain rulings, while focusing on a specific and technical legal issue like the wearing of the kirpan, resonate with the foundational principles embedded in a legal system and may have a long-term and unexpected impact⁷⁹. It may be sufficient to note that in 2023, the administrative tribunal of Lazio confirmed, in two different decisions, the denial of applications for Italian citizenship from two third-country nationals⁸⁰. The applications were rejected on the grounds of the applicants’ previous criminal convictions for carrying a kirpan. According to the tribunal’s perspective, a breach of Italian criminal law indicated a lack of integration of the individual into the social fabric, deemed a prerequisite for acquiring citizenship⁸¹. What is most concerning is that the decisions relied on the 2017 Supreme Court of Cassation judgment, quoting it as a landmark precedent and as an influencing legal authority⁸².

The comparative inquiry on the carrying of the kirpan, offered in the present paper, has demonstrated how matters regarding religious symbols might be influenced by manifestations of judicial populism. As the Italian case shows, such an approach not only undermines the constitutionally protected values of religious pluralism and marginalizes minority religious groups, but also jeopardizes judicial independence,

⁷⁷ Supreme Court of Canada, *Multani v. Commission scolaire Marguerite-Bourgeoys*, quoted, para 59; see also **E. PALICI DI SUNI**, *Simboli religiosi e laicità: aperture e chiusure in alcune recenti pronunce*, in *Rivista di Diritti Comparati*, 2017, pp. 1 ff.

⁷⁸ Supreme Court of Canada, *Multani v. Commission scolaire Marguerite-Bourgeoys*, quoted, para 58.

⁷⁹ **A. RUGGERI**, *La questione del kirpan quale banco di prova del possibile incontro (e non dell’inevitabile scontro) tra le culture, nella cornice del pluralismo costituzionale (a margine di Cass., I sez. pen., n. 24084 del 2017)*, in *consulta online, Studi* 2017/2, p. 316.

⁸⁰ See Art. 9, letter “f” of the Italian Citizenship Law, Legge 5 febbraio 1992, n. 91, “Nuove norme sulla cittadinanza”.

⁸¹ TAR Lazio-Roma (sez. V), Decision no. 13511 of 1 September 2023); TAR Lazio - Roma (sez. V), Decision no. 6967 of 22 April 2023.

⁸² The two judgments define the 2017 judgment as “a fixed point”.



impartiality, and public trust in the judiciary, reinforcing intolerance towards religious minority practices⁸³. In contrast, the approach embraced by the Canadian Supreme Court was characterized by careful consideration of religious freedom and identities, alongside a judicial rationale that weighted freedom of religion or belief in light of public safety interests⁸⁴. This concrete exercise of balancing resonates both with the legal language of fundamental rights and freedoms, and with the foundation of a democracy based on religious pluralism⁸⁵. It is also grounded in a context-specific analysis that focuses on “the only, real, relevant”⁸⁶ legal question: whether the protection of public safety can validly limit the carrying of the kirpan as a manifestation of religious freedom in public and by observance.

Populist narratives have an ambivalent relationship with religious symbols. They may leverage them as identity-markers to bolster consent and authority, or they may resist them to endorse majoritarian perspectives, potentially disregarding religious minority rights. This intricate dynamic is as challenging as it is elusive. Despite the inherent difficulties, effectively guarding judgments against the influence of judicial populism may be an achievable goal. The Canadian case shows that judicial decisions grounded in well-established legal principles, case-law and precedents, and rigorous reasoning can provide a buffer against populist abuse of religious symbols. The Italian case shows that succumbing to abstract principles, if not “legal intuitions”, may have two negative externalities: in the short-term, it may increase the risk of undermining the universal scope of the right to religious freedom or belief; in the long-term, it may deviate from the inclusive and pluralist constitutional conception of citizenry⁸⁷.

⁸³ **A. BERNARDI**, *Populismo giudiziario? L'evoluzione della giurisprudenza penale sul kirpan*, quoted, p. 703.

⁸⁴ **A.N. CRAWFORD**, *Learning Lessons from Multani: Considering Canada's Response to Religious Garb Issues in Public Schools* Notes, quoted, p. 179.

⁸⁵ **A. MORELLI**, «Valori occidentali» e principi costituzionali. Il tema identitario nella giurisprudenza in materia di simboli religiosi, quoted, p. 25.

⁸⁶ **F. BASILE, M. GIANNOCCOLI**, *Il coltello kirpan, i valori occidentali e gli arcipelaghi culturali confliggenti. A proposito di una recente sentenza della Cassazione*, in *Diritto, Immigrazione e Cittadinanza*, issue 3, 2017, pp. 1 ff.

⁸⁷ On the relation between access to citizenship and the religious factor see **T. PAGOTTO**, *Religion-based Boundaries: Restricting Pluralism through Symbolic Barriers*, in T. PAGOTTO, J.M. ROOSE, G.P. MARCAR (edited by), *Security, Religion, and the Rule of Law: International Perspectives*, Routledge, Oxon, UK; New York, 2024, pp. 172 ff.