

HAKEMLİ MAKALE/ PEER REVIEWED ARTICLE

AVRUPA'DAKİ MÜSLÜMANLARIN YENİ KİMLİĞİ; RAWLS'UN VEYA SCHMITT'İN PERSPEKTİFİ

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ÖZET

İslam, Batı'da her zamankinden daha fazla görünür hale geliyor. Bir kamusal alanda Müslüman olma fikri ve dolayısıyla Avrupa ülkelerindeki Müslüman nüfus sembollerinin görünürlüğü bazı sonuçlar doğurmuştur. Bu makale, bu etkileri John Rawls ve Carl Schmitt'in perspektiflerinden tartışacaktır. İlk iki bölüm, John Rawls ve Carl Schmitt'in kitapları ve ikincil kaynakları aracılığıyla fikirlerini tasvir ediyor. Üçüncü bölüm, Rawls ve Schmitt'in teorik çerçevesini, bazı özel davaları inceleyerek açıklamadan önce, Avrupa ülkelerinde dini özgürlük kavramını, bu konudaki politik kararları ve yasal uygulamaları analiz edecektir.

Anahtar Kelimeler: *Dini özgürlük, Müslüman kimliği, Müslüman sembolleri, Carl Schmitt, John Rawls.*

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THE NEW IDENTITY OF MUSLIMS IN EUROPE RAWLS'S OR SCHMITT'S PERSPECTIVE

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ABSTRACT

Islam is becoming more visible than ever before in the West. The idea of being Muslim in a public space and consequently the visibility of the symbols of the Muslim population in European countries have paved the way for some implications. This article will discuss these implications from the perspectives of John Rawls and Carl Schmitt. The first two parts outline the ideas of John Rawls and Carl Schmitt via their books and secondary sources. The third part will analyse the concept of religious freedom in European countries and the political decisions and legal implementations regarding this issue, before attempting to reveal Rawls' and Schmitt's theoretical framework by examining a number of specific cases.

Key words: *Religious freedom, Muslim identity, Muslim symbols, Carl Schmitt, John Rawls.*

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INTRODUCTION

The concept of religious freedom can be considered in the light of individual activities because all religions reveal themselves through some kind of human activities, worship, and practices. The issue of religion is considered a controversial area in a number contexts. However, this article argues that the phenomenon of religious freedom can play a key role in understanding, questioning, and accounting for governments' approach and their courts' legal implementations regarding religious differences. In this sense, this article claims that the political and legal decisions of governments and courts are the most crucial and valid indicators to analyse the different perspectives of governments concerning religious differences.

The literature on Islam and the West contains various popular and controversial topics, especially in terms of Islamic identity through terrorism and immigration. An assumption in the literature is that these debates arise due to Islam becoming more apparent. In other words, Islam is becoming more visible than ever before in the West. In each country of Europe, especially in Western Europe, not only mosques, halal shops, and various kinds of Islamic-oriented places are becoming more visible but Islamic symbols such as veils. The idea of being Muslim in a public space and the domination of the symbols of the Muslim population have paved the way for the opening of debates. The majority of debates focus on the phenomenon of Islamophobia. Departing from previous studies, however, this article discusses the concept of religious freedom as it concerns a formation of a new identity through political and legal decisions.

This essay consists of three parts. The first two parts outlines the ideas of John Rawls and Carl Schmitt via their books and secondary sources. The third part will analyse the concept of religious freedom in European countries and the political decisions and legal implementations regarding this issue, before attempting to reveal Rawls' and Schmitt's theoretical framework by examining a number of specific cases.

1) John Rawls' *A Theory of Justice*

One of the best ways to understand and capture the essence of an idea is to determine its main conceptual framework, reveal its basic assumptions, and clarify its definitions, which give shape to the idea's whole paradigm. Then, we need to reveal the connections between them. This methodology allows us to comprehend ideas and provides a field to discuss them, question them, and finally evaluate their suitability as a methodology for other areas. Before reaching the limits of an idea, we need to engage in comparisons of the idea with other related ideas; therefore, in this part the study will focus on Rawls' main conceptual framework and identify the differences between Rawls' ideas and those of others, in the light of the aforementioned reasoning mechanism.

Every society and all people need to guarantee the virtue of their social institutions so that they can provide order and security. Through virtuous institutions, people can deal with conflicts and secure a peaceful life. According to Rawls' theory, this virtue is held to be justice.¹ Rawls used fresh reasons and methods in order to advance a new concept of justice. First, he states: "My aim is to present a conception of justice which generalises and carries to a higher level of abstraction the familiar theory of the social contract as found, say, in Locke, Rousseau, and Kant."² In this sense, his theory of justice is based on an abstraction of the social contract theory; namely, he recreates social contract theory through new conceptions and from a new perspective.

First, the notion of a hypothetical agreement³ can be seen as a distinctive and fundamental feature of his theory. This agreement must be prepared by a special person and in special conditions because through it, the public can solve their conflicts or problems and each group within society can ensure the protection of its interests. However, individuals can have different ideas and belong to different races,

¹ John Rawls, *A Rawls: Theory of justice (cloth)* (Belknap Press of Harvard University Press 1974) 10

² John Rawls, *A Rawls: Theory of justice (cloth)* (Belknap Press of Harvard University Press 1974) 11

³ John Rawls, 'Justice as fairness: Political not metaphysical' (1985) 14(3) *Philosophy & Public Affairs* accessed 27 December 2016 223–251

classes, genders, and religions. They may also differ with regard to their conception of what is good. To bring all these different parties together, society needs the notion of impartiality; otherwise, every person would like to impress varying interests on others or in some way dominate them. Therefore, individuals must agree on not to impose their interests or their personal concept of the good; people need to find common ground regarding basic structures and social institutions in order to reach an agreement. The question then remains how societies can reach such an agreement and what the fundamental requirements are for such a common base? To solve this problem, Rawls generates a new concept: the “original position,” which is a special condition for hypothetical agreements. Rawls says that people persons need to suppose that they cannot know their place in society, class, race, and gender, and especially the conception of good, when deciding on how to act and structure their institutions. They are behind a “veil of ignorance,” which provides society with impartiality because people can override their biases and interests.

Through this conceptualisation, Rawls offers a hypothetical individual and this person takes part in the “original position.” Rawls emphasises that the original position does not correspond to the natural position of a person and the person behind the veil of ignorance does not correspond to the nature of the person; rather, they are methodological devices that help us to reach the fundamental principles of justice. Hence, Rawls’ concept of justice cannot be considered a metaphysical perspective; it is determined through a political framework.⁴ As mentioned previously, if a person in the original position – and therefore behind the veil of ignorance – needs to come to an agreement with other people, they need to find common ground and a shared concept of good. At this point, Rawls argues that people have a “thin theory of the good”⁵ and through this theory, they can determine “primary goods” such as liberties, opportunities, wealth, and income. People can

⁴ John Rawls, 'Justice as fairness: Political not metaphysical' (1985) 14(3) *Philosophy & Public Affairs* accessed 27 December 2016 223–251

⁵ Jonathan Wolff, *An Introduction to Political Philosophy* (Oxford University Press 1996) 55

then use their rationality and mutuality as free and equal persons and come to an agreement about these “primary goods.”

Rawls makes use of the concept of “justice as fairness” to clarify his theory, which he said “conveys the idea that the principles of justice are agreed to in an initial situation that is fair.”⁶ He uses the “original position” as a representative device because in this position, each element represents something that people accept on moral grounds. The purpose of this is to determine which principle of justice would be chosen in the original position. To do that, Rawls establishes two principles of justice:

- “1. Each person has an equal right to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with a similar scheme for all.
2. Social and economic inequalities are to satisfy two conditions: first, they must be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they must be to the greatest benefit of the least advantaged members of society.”⁷

These principles could be summarised as the liberty principle, the difference principle, and the fair opportunity principle. These principles would be chosen from behind the veil of ignorance, in the original position.

In summary, first, Rawls outlines the initial situation, and the problem of the rational and impartial choice. Then, he establishes principles that are acceptable to all parties and applicable across society. By doing this, Rawls presents his theory of justice as not a comprehensive moral doctrine but rather that “justice as fairness tries to present a conception of political justice rooted in the basic intuitive ideas found in the public culture of a constitutional democracy.”⁸

⁶ John Rawls, 'Justice as fairness: Political not metaphysical' (1985) 14(3) *Philosophy & Public Affairs* accessed 27 December 2016 223–251

⁷ John Rawls, 'Justice as fairness: Political not metaphysical' (1985) 14(3) *Philosophy & Public Affairs* accessed 27 December 2016 223–251

⁸ John Rawls, 'Justice as fairness: Political not metaphysical' (1985) 14(3) *Philosophy & Public Affairs* accessed 27 December 2016 223–251

2) Carl Schmitt's Main Ideas

Every theoretical argument based on central ideas, or even only one sentence, can be the source and fundamental basis of a theoretical structure. To grasp and capture a complex theoretical structure, one needs to determine this central sentence and focus on the connection between it and other arguments. These connections may serve as indicators to assess whether the structure of the argument is substantive.

In the work of Carl Schmitt one of the central sentences is as follows: "...sovereign is he who decides on the exception."⁹ In this sentence, three main issues are notable: the definition of "sovereign," the concept of the "decision," and the "exception." We will consider these concepts to understand Schmitt's ideas. Almost every political entity aspires to order, and especially legal order. In Schmitt's view, there can be no functioning legal order without a sovereign authority. Therefore, one needs to initially define the concept of "sovereign" and in Schmitt's concept, sovereign authority manifests itself in the exception. In his work *Dictatorship* the concept of sovereignty is clearly associated with absolute freedom from constitutional constraints and the power to create a constitutional order, with constituent power. Schmitt argues that "the constituent power is not tied to legal forms and procedures; it is always state of nature when it appears in its inalienable character... it never constitutes itself through constitutional laws."¹⁰ For Schmitt, sovereign authority and constituent power is inconsistent but intimate;¹¹ in other words, Schmitt's use of these concepts is changeable, according to the context. Briefly, Schmitt defines a sovereign dictator as someone capable of overthrowing old constitutional forms and establish new ones.

⁹ Carl Schmitt and Tracy B Strong, *Political theology: Four chapters on the concept of sovereignty* (George Schwab ed, University of Chicago Press 2006) 5

¹⁰ Schmitt C, Hoelzl M and Ward G, *Dictatorship* (Polity 2017)

¹¹ LiorBarshack, 'Constituent power as body: Outline of a constitutional theology' (2006) 56(3) The University of Toronto Law Journal accessed 27 December 2016 185–222

According to Schmitt, each legal order is based on a decision, not on a norm. Here, the first question is who has the authority and competence, in terms of the formation of the decision. Another issue concerns when the legal system fails to answer the question of competence. Schmitt argues that “the decision frees itself from all normative ties and becomes in the true sense absolute.”¹² In other words, the decision derives its validity not from norms but by virtue of being absolute. Since sovereign authority is absolute, the authority decides how to apply general rules to concrete cases and how to deal with problems of contested interpretation; in exceptions, “authority proves that to produce law it need not be based on law.”¹³

In terms of the definition of an “exception” in Schmitt’s work, he first states that attempts to legalise exceptional situations are doomed to failure because the exception confirms not only the rule but also its existence, which derives only from the exception. For Schmitt, “the political sovereign is shown not to be constituted by law but rather as the actor who has the legitimacy to make law because it is he who decides the fundamental or existential issues of politics.”¹⁴ The exception is beyond the law, and at that point, the sovereign comes into existence. Therefore, the exception can be more vital than the rule because, as Schmitt writes, “The seriousness of an insight goes deeper than the clear generalisations from what ordinarily repeats itself.”¹⁵

Another significant perspective regarding Schmitt’s ideas is the concept of political and political existence. These concepts are associated with the “main sentence” discussed previously. Schmitt discusses this issue in the light of the polarity of friend and enemy. In his view, identifying an enemy is very significant for political unity and a stable democracy. In his book *Constitutional Theory*, Schmitt

¹² *ibid*, 220

¹³ *ibid*, 195

¹⁴ Carl Schmitt and Tracy B Strong, *Political theology: Four chapters on the concept of sovereignty* (George Schwab ed, University of Chicago Press 2006) 50

¹⁵ Carl Schmitt and Tracy B Strong, *Political theology: Four chapters on the concept of sovereignty* (George Schwab ed, University of Chicago Press 2006) 15

defines a sovereign entity as a group united through the willingness of its members to die in war against a particular enemy.¹⁶

Finally, Schmitt's critique of liberalism is very important in coming to an understanding of the tremendous impact of his theory in contemporary political thought. He criticised liberal constitutionalism from a number of perspectives, but I will focus on this aspect in the following sections.

In brief, Schmitt first and foremost uses the concept of sovereign in terms of who is able to declare a state of emergency/exception and determines which way is useful to return normality to that state. This decision is based on political existence, which is created by the polarity of enemy and friend. Schmitt regards two basic elements as being of particular importance: legal order and political unity. Order and unity are based not on laws or rules that derive from politics but rather stem from norms that are basically existential (*seinsmäßige*).

3) Islam In The West As 'The Enemy'

The historical origin of liberal values can be traced to the Reformation period and its consequences. These values are also rooted in the religion wars in Europe in the 16th and 17th centuries. Hence, one of the historical roots of liberalism is the development of doctrines urging religious toleration,¹⁷ during a period of religious strife. The critical concern is the advantage of the liberal value of religious freedom because almost every conflict is caused by differences and, most importantly, these so-called differences often emerge from religious factions. In the light of this issue, in my opinion, the issue of religious freedom stands at the core of liberal democracies.

Today's European liberal democracies are facing a number of dilemmas. They can be categorised into conceptual and actual dilemmas. In my opinion, the most challenging conceptual predicament consists of identity-related claims. Then,

¹⁶ Carl Schmitt, Trans. Jeffrey Seitzer, *Constitutional theory* (Duke University Press 2008)

¹⁷ John Rawls, 'Justice as fairness: Political not metaphysical' (1985) 14(3) *Philosophy & Public Affairs* accessed 27 December 2016 223–251

the most intractable actual problems are global terrorism and immigration. Of course, this list does not include all such problems, yet I will choose these because they are the most controversial ones, in terms of the relationship between the West and Islam. These dilemmas may affect each other because current reality also leads to new conceptual analyses. Western liberal democracies are attempting to protect their unitary states against global terrorism and identity-related claims that derive mostly from immigration. In this context, European governments tend to see Islam and Muslims as a major cause behind today's global terrorism, and immigration is largely associated with Islam. Moreover, these issues have created a new phenomenon – Islamophobia. Susanna Mancini writes: "From frankly racist populist parties and social movements to enlightened defenders of women's rights, from Christian conservative circles to mainstream political actors, Islamophobia seems capable of gluing together apparently irreconcilable components of European democracies."¹⁸ However, while European governments struggle with these issues, they should not abandon their ideals of religious freedom, which are rooted in their liberal values.

In this chapter, I further analyse the legal and political responses of European governments against these dilemmas that are associated with Islam and Muslims. In the first part, I discuss global terrorism and immigration in terms of the formation of a new identity. The second part makes use of Mancini's article and demonstrates the legal and political responses regarding Islam, and highlights the different approaches to Christianity and Islam in court decisions. The third part questions whether European liberal democracies have been transformed in the light of John Rawls' and Carl Schmitt's theoretical frameworks.

A) Global Terrorism And Immigration

Global terrorism is the most controversial issue in the world at the moment, and it is generally correlated with Islam. Both in the media and the political arena,

¹⁸ Susanna Mancini and Michel Rosenfeld, *Constitutional Secularism in an Age of Religious Revival*. (Oxford University Press 2014)

Islamic fundamentalism is regularly mentioned as a symbol of horror. For instance, after September 11, 2001, al-Qaeda was marked as a symbol of evil, as Schmitt says “the danger is that Al-Qaeda type Islamic extremism may win the pyrrhic battle of establishing itself in the western popular imagination as representative of a single, uncomplicated and un-modernised ‘Muslim world’ and of an essentially intolerant, non-rationalised ‘Islamic religion’.”¹⁹ To be precise, this kind of terrorist activities could lead to the formation of new Muslim identity which has no space for Western values such as democracy and modernity. Consequently, global terrorism could create a large gap between European countries and Islamic ones, described by Balibar as “insurmountability of cultural differences.”²⁰

Immigration is the other actual reality that affects current political conflicts all around the world. Especially following the “Arab Spring,” many Middle Eastern countries experienced humanitarian problems such as food shortages and infectious diseases caused by civil war. The five-year-long civil war in Syria has proven very intractable and a substantial number of people have been obliged to migrate to other countries to save their lives. Many immigrant Muslims would like to live in Europe; however, European countries frequently do not allow them to enter their countries, and approve the entry of only a small number of immigrants. These issues are usually discussed against a background of concern about the presence of Islam in Europe, and the situation is considered dangerous in terms of the preservation of European cultural values. Eventually, as Casanova mentioned, it has transpired that “immigration and Islam are almost synonymous.”²¹

¹⁹ Marinus Diamantides, *Threats and Phantoms of Organised Crime, Corruption and Terrorism* (Petrus C. van Duyn and others eds, Wolf Legal Publishers 2004)

²⁰ Etienne Balibar, “Istherea’Neo Racism?,” in Etienne Balibar and Immanuel Maurice Wallerstein (eds), *Nation, Class, Ambiguous Identities* (1991), 17–28. London: Verso

²¹ José Casanova, “the Long, Difficult, and Tortuous Journey of Turkey into Europe and the Dilemmas of European Civilization” (2006) 13(2) *Constellations* 242.

B) Political And Legal Responses Against The New Identity Of Muslims

As a result of the problems of terrorism and immigration, the new perceptions the West has about Islam and Muslims have been manifested in political and legal responses. In this chapter, we analyse and assess political propaganda and court decisions in Western European countries, following Mancini's standpoint and her attempts to reveal how European countries engage in discrimination towards Islam and favouritism towards their culture – namely, the European Christian tradition.

Mancini asserts that “Religion symbols play a key role in identity-related dynamics.”²² On the one hand, these symbols have the capacity to evoke the sense of unquestioned belonging, while they also adorn the public sphere. Mancini looks at the crucifix, which is a symbol of “Christian cultural inheritance,” and the “veil,” which is understood as a public display of someone as “Muslim.” She further argues: “The display of a crucifix in state schools or court rooms clearly identifies the ‘official culture’ with that of the majority, whereas the ban on the wearing of the veil in state schools unambiguously marks the marginalisation of the culture the veil is supposed to represent.”²³

A profound discussion of all these cases is beyond the limits of this article, and therefore I would like to focus on the related reasons behind these political and legal decisions. In general, European countries offer only very questionable reasons, in terms of legality. First of all, in France, the headscarf was deemed to constitute a religiously proselytising symbol, which means the authorities were disturbed by it and felt that it threatened their religion or culture. In another political decision, headscarves were declared a threat to public order because they are associated with communitarianism; however, the commission did not explain what is the relationship between headscarves and communitarianism. Furthermore, they argued that women are pressured into wearing the headscarf by their family and other

²² Susanna Mancini and Michel Rosenfeld, *Constitutional Secularism in an Age of Religious Revival*. (Oxford University Press 2014) 15

²³ *ibid*, 17

group members. These arguments are important because they feature in almost all related cases and emphasise gender: "Sex and gender play a key role in relation to the identity-related dynamics."²⁴ Lastly, in 2010 in France, full facial veils were banned in all public spaces, with the reasons being offered that they militated against the public order, secularism, and gender equality.²⁵

In Germany, the "headscarf unlike the nun's habit is interpreted as a political symbol that denies the equality of women."²⁶ In particular, in one notable incident, the Bavarian Constitutional Court argued that "Christianity does not coincide with the Christian faith but rather with values that, albeit rooted in the Christian tradition, have become part of the common inheritance of Western civilisation."²⁷ However, the court claimed that religious freedom can be limited in the name of "constitutional values." It is very obvious that Court considered Christianity not as a religion but rather a fundamental value and that the Christian, Western, and European tradition represent neutrality. In the United Kingdom, wearing the jilbab in schools, a court asserted "violated the religious freedom of others and made pupils and teachers feel "uncomfortable" in the presence of clothes that are generally associated with fundamentalism."²⁸

The European Court of Human Rights has also dealt with the "Islamic veil issue." We would like to briefly mention the cases *Sahin v. Turkey* and *Dahlab v. Switzerland*. Carolyn Evans argues that the Şahin case is the first significant decision

²⁴ *ibid*, 18

²⁵ Susanna Mancini and Michel Rosenfeld, *Constitutional Secularism in an Age of Religious Revival*. (Oxford University Press 2014)

²⁶ Human Rights Watch, "Discrimination in the Name of Neutrality: Headscarf Bans for Teachers and Civil Servants in Germany" (2009), 26 available at <http://www.hrw.org/sites/default/files/reports/germany0209_web.pdf> (citing the explanatory comments in the Bavarian government draft law, Gesetzesentwurf der Staatsregierung zur Änderung des Bayerischen Gesetzes über das Erziehungs- und Unterrichtswesen, Bavarian parliament, 15th election period, Drucksache 15/368, 18 February 2004).

²⁷ Bayerischer Verwaltungsgerichtshof [BayVG] [Bavarian Higher Administrative Court], 15 Jan. 2007, No. Vf. 11-VII-05, available at <<http://www.bayern.verfassungsgerichtshof.de/>>.

²⁸ *Regina (Shabina Begum) v. Governors of Denbigh High Sch.* [2006] UKHL 15, [2007] 1 AC 100 (HL) (appeal taken from Eng.).

by the ECHR's Grand Chamber on the issue of religious symbols, while the Dahlab case is also very important because it directly concerns religious freedom

legal sense, but Dahlab is likely to be more representative and typical of the fate that awaits other applicants in religious freedom cases of this nature."²⁹ Furthermore, Altıparmak highlighted that the Şahin case revealed the implied perception of Islam in Europe and the dilemma of the incorporation of Islamic values into Western democracies. Banning the headscarf from the schools can be seen as one of the main steps backwards in this regard.³⁰ In other words, these two cases are very significant because they reveal a new identity regarding Islam and Muslims, from the European perspective.

These veil cases allow one to evaluate the discrimination affecting Islam and its new identity, between "Islamic" terrorism and immigration and Christianity, which is seen as the basis of Western liberal democracies. Furthermore, one can observe the same perception in different situations. For instance, Mancini mentioned that European Union Enlargement Commissioner Olli Rehn stated, "It will be a very long and difficult journey. European values need to become reality in all walks of life, in all corners of the country, before Turkey can join the European Union."³¹ However, this gives rise to speculation about what these European values are, and whether they are related to the Western Christian tradition.

The final case is the dissolution of Welfare Party (Refah Partisi, RP) in Turkey. Kevin Boyle has said that the RP was dissolved because it was deemed a religious party, and the Constitutional Court in Turkey claimed that it planned to establish a new Islamic order and enact Shariah law; that is to say, it would change Turkey's secular order and undermine democracy. In addition, in the Refah Partisi

²⁹ Carolyne Evans, 'The Islamic Scarf in the European Court of Human Rights' (2006) 7 Melbourne Journal of International Law 23-43

³⁰ Kerem Altıparmak and Onur Karahanogullari, 'European Court of Human Rights After Sahin: The debate on headscarves is not over, Leyla Sahin v. Turkey, Grand Chamber Judgment of 10 November 2005, Application No. 44774/98' (2006) 2 European Constitutional Law Review 268-292

³¹ Turkey Must Embrace EU Reforms' In all Walks of Life" (1 July 2005), quoted by Casanova, Long, Difficult, and Tortuous Journey of Turkey into Europe and the Dilemmas of European Civilization" SDÜHFD CİLT: 7, SAYI 2, YIL 2017

case “The European Court of Human Rights indulged in a wholly unnecessary and inappropriate critique of this religion, which has over 100 million followers in the European legal space of forty-five States over which the Court exercises jurisdiction”³²

In the authors opinion, all of these cases indicate that in the opinion of European courts and governments, Islam is incompatible with European values, which are basis of European identity. Some of these values are associated with the concept of secularism, such as the RP case, while others are associated with gender equality, as in France; still others are associated with religious freedom, as in the UK, others with proselytism like Dahlab, and others with the Christian tradition, as in Germany. However, the common point is clear: Islam represents the formation of the new identity and this identity cannot comply with the European values. Consequently, all these cases and discussions indicate that European governments have transformed from liberal pluralistic democracies into identitarian democratic states, which is discussed below.

C) Rawls' Theory Of Justice Or Schmitt's Democratic State

Rawls argues that in order to provide impartiality, we need a “veil of ignorance,” in which people make decisions that are not based on their biases and particular interests, religions, moral values, genders, and traditions. So that people can live together and ensure pluralism without conflict, they should make a hypothetical agreement behind the “veil of ignorance.” All people need to participate in this agreement equally and come to an appropriate agreement. In this way, society reach a higher standard and all people will be equal.

In contrast to Rawls, Schmitt argued that society is not based on equality but rather homogeneity. In order to bring about homogeneity, he argue that “all political communities are based on a constitutive distinction between insiders and outsiders,

³² Kevin Boyle, 'Human Rights, Religion and Democracy: The Refah Party Case' (2004) 1(1) Essex Human Rights Review

polarity of friend and enemy.”³³ This conceptualisation is necessary in order to unify the members of society. According to Schmitt, the polarity between friend and enemy provides homogeneity, an essential part of political unity, and in turn, this unity is the essence of democracy. In his words, “the concrete existence of the politically unified people is prior to every norm.”³⁴ Therefore, for Schmitt, all political communities, including democratic ones, need to create an identity that is the enemy and they should not seek agreement with them; rather, they should exclude and fight them, if the “enemy” threatens the political unity of the people. Basically, the “enemy” threatens homogeneity. In my point of view, the crucial part of Schmitt’s thought is the identification of the enemy to democracy as this is the only way for “the state safeguard, the principles, and the values of democracy.”³⁵ For Schmitt, pluralism is a threat to democracy and militates against homogeneity and political unity.

Rawls’ and Schmitt’s ideas are derived from different conceptual frameworks. Miguel Vatter highlights that “Rawls’s ‘political’ liberalism considers only the possibility of deep-seated consensus instead of radical antagonism, rational deliberation instead of political decision, and justice instead of power.”³⁶ However, in the Schmittian conception, the “political” refers to a level of social conflict that is irreducible to the project of establishing a stable political order. In other words, Rawls’ conception of the “political” is based on deep-seated, rational deliberation and justice, but Schmitt’s is based on radical antagonism, political decisions, and power.

Schmitt’s critique of liberalism also plays a key role in understanding his ideas. It is composed of a number of parts but here, it is his critique of the rule of law that is significant. This last is twofold, as outlined by Monk and Zimmerman. First, it

³³ Carl Schmitt, “the Concept of the Political,” in Carl Schmitt, *Political theology: Four Chapters on the theory of Sovereignty* (George Schwab trans., Chicago: University of Chicago Press, 1996), 27

³⁴ Carl Schmitt and others, *Constitutional theory* (Duke University Press 2008)

³⁵ Susanna Mancini and Michel Rosenfeld, *Constitutional Secularism in an Age of Religious Revival*. (Oxford University Press 2014)

³⁶ Miguel Vatter, ‘The idea of public reason and the reason of state: Schmitt and Rawls on the political’ (2008) 36(2) *Political Theory* accessed 27 December 2016 239–271

is conceptual, seeing liberal theory as insufficient to perceive the reality of legal practice. It is also practical, in that it believes that liberal politics cannot sustain the polity against "the enemy" because it depends on the rule of law.³⁷

As mentioned previously, European governments, either through judicial cases or political activities, are creating a new identity that corresponds to the Schmittian notion of "the enemy." They initially identify their culture, namely "Christianity," and then identify "the enemy" as Muslims. Such political and legal action cannot find any justification in Rawls' ideas. Rawls's concept of the "veil of ignorance" runs almost completely opposite to their actions because their decisions are based on their so-called culture and traditions. Secondly, they are not concerned with a "deep-seated consensus" or "justice" but rather pay more importance to a stable political order and radical antagonism between friend and enemy. Thirdly, the reasons put forward by European governments, courts and the ECHR are consistent and may not be fully legal. Their decisions are derived not from the liberal rule of law but the Schmittian concept of "decision," which marks the "Muslim" as an enemy.

For Schmitt, the church represents the historical background of Jesus, and Catholicism represents the values that separate it from barbarism,³⁸ and are the essence of European civilisation. However, Schmitt did not conceive of Christianity as a moral system or religion but as a "historical event."³⁹ Likewise, in Europe, Christianity for the most part is not a genuine religion; it is a kind of "belonging without believing". In today's secularised Europe, "Christianity" plays the key role instead of Schmitt's Catholicism and Muslims have been given the role of the enemy, instead of Schmitt's enemy, the Jews. To be more precise, Christianity has come to represent Europe's liberal tradition and fights against "Muslim" illiberal projects, and

³⁷ Iain Hampsher-Monk and Keith Zimmerman, 'Liberal Constitutions and Schmitt's Critique' (2007) XXVIII(4) History of Political Thought

³⁸ John P. McCormick, "Carl Schmitt's Europe: Cultural, Imperial and Spatial Proposals for European Integration 1923–1955," quoted by Mary Anne Perkins, *Christendom and European Identity: the Legacy of a Grand Narrative Since 1789* (Berlin: Walter de Gruyter, 2004), 315.

³⁹ Carl Schmitt, *Glossarium* 283, translated in Gross, *Carl Schmitt and the Jews* 218.

whether courts should ban or limit Muslim symbols in order to protect “European” values from others, in the name of homogeneity. However, the Schmittian identity is not real but rather transcendent, and he considered that homogeneity, unity, and identity do not actually exist: “they are ultimately nothing more than a myth.”⁴⁰

CONCLUSION

In conclusion, today, European governments are experiencing a transformation in their perceptions of democracy, in terms of ideology. These transformations, in my opinion, are creating a sizeable gap between the European and Muslim worlds. This gap is expanding day by day, and far-reaching conflicts becoming increasingly unavoidable. European governments are aware that in order to protect artificial homogeneity, unity, and identity, they must not sacrifice pluralism, religious freedom, and fundamental rights. They also notice that Islam is the very complex religion; it is open to different kind of interpretations and should not be condemned based on simplistic interpretations. In the words of Diamantides, “Our modern ignorance of Muslim politics and the history of Islamic religion and law are compounded by the terrorist phenomenon.”⁴¹ To be more precise, neither West nor Islam are homogeneous entities. Each one consist of diversity of cultures, social formations and weltanschauungs. Therefore, in our perspective, the significant solution is that each culture should attempt to understand other cultures through genuine sources which are formed by the whole culture rather than manipulated sources. In this way, each culture may comprehend others as a part of cultural diversities which are necessary for whole humanity instead of ‘the enemy’.

⁴⁰ Susanna Mancini and Michel Rosenfeld, *Constitutional Secularism in an Age of Religious Revival*. (Oxford University Press 2014)

⁴¹ Marinós Diamantides, *Threats and Phantoms of Organised Crime, Corruption and Terrorism* (Petrus C. van Duyne and others eds, Wolf Legal Publishers 2004)

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