

LAW OVER LEGALISM: INTERNATIONAL COURT LEGITIMACY IN *LAUTSI V. ITALY*

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2009 brought an existential crisis to the European Court of Human Rights (ECtHR). In November, it unanimously ordered Italy to remove crucifixes from public schools. Backlash was unprecedented. The government promptly announced it would not comply. Politicians and social actors all across the political spectrum harshly criticized the decision and bashed the Court. Ten European countries joined Italy in referring the case to the Grand Chamber of the Court, which reversed the decision in 2011. The storm abated. Lautsi v. Italy likely received the most public attention of any ECtHR judgment. Much of the Court's subsequent case-law was decided with an eye on avoiding another Lautsi.

This Article analyzes the social and political reactions to the Lautsi judgment in Italy in order to answer urgent questions in international law: how do the decisions of international courts obtain legitimacy, and why are they facing increasing trouble in doing so?

Lautsi and its aftermath suggest that international courts' decisions are not legitimated merely through the soundness of their legal reasoning, but also by their ability to be perceived as consistent with national identity. Political debate will strive to situate a controversial decision as aligned with national values and mores. A successful international judicial decision is one that helps a community to find its better self.

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I. INTRODUCTION

In 2009, the European Court of Human Rights (“ECtHR”) unanimously ordered Italy to remove the crucifixes hung on public schools’ walls.¹ From the perspective of Strasbourg, this probably did not appear as a big deal: the crucifixes are mandatory in Italian schools only because of a decree signed by Mussolini in the 1920s,² and most schools do without them anyway.³ But the backlash was momentous. The reaction against the ECtHR’s decision united the conservative, Catholic Prime Minister Silvio Berlusconi,⁴ and the atheist, leftist, President Giorgio Napolitano;⁵ it aroused city mayors scattered around the country who to distributed free crucifixes;⁶ it prompted the Minister of Defense to yell on prime time television that European judges could “die;”⁷ and it led Jewish intellectuals,⁸ Muslim organizations,⁹ ten European states,¹⁰ and religious organizations in the United States¹¹ to support the Italian government in its judicial fight. Two years later, the Court’s Grand Chamber reversed the decision in the strongest terms.¹²

The ECtHR’s *Lautsi v. Italy* judgment has likely attracted the most public attention of the Court’s recent cases.¹³ As such, *Lautsi* has aroused no shortage of scholarly curiosity.¹⁴ But many things have happened since.

1. *Lautsi v. Italy*, App. No. 30814/06, ¶ 57 (2009), <https://hudoc.echr.coe.int/eng?i=001-95589> [hereinafter *Lautsi I*].

2. See *infra* notes 71–74 and accompanying text.

3. See *infra* note 302 and accompanying text.

4. See *infra* note 214 and accompanying text.

5. See *infra* note 305 and accompanying text.

6. See *infra* note 158 and accompanying text.

7. See *infra* note 211 and accompanying text.

8. See *infra* notes 259–60 and accompanying text.

9. See *infra* note 305 and accompanying text.

10. See *infra* notes 2263 and accompanying text.

11. See *infra* note 262 and accompanying text.

12. *Lautsi v. Italy* (No. 30814/06), 2011-III Eur. Ct. H.R. 1, ¶ 3.5 (2011) [hereinafter *Lautsi II*].

13. See Joseph Weiler, *Freedom of Religion and Freedom From Religion: The European Model*, 65 MAINE L. REV. 760, 762 (2013) (“It is hard to recall any ECtHR litigation in recent times that has attracted as much public and media attention.”); see also Giulio Itzcovich, *One, None and One Hundred Thousand Margins of Appreciations: The Lautsi Case*, 13 HUM. RTS. L. REV. 287, 289 (2013) (“*Lautsi I* was reported to have caused the most widespread opposition in the history of the ECtHR.”); Dominic McGoldrick, *Religion in the European Public Square and in European Public Life—Crucifixes in the Classroom?*, 11 HUM. RTS. L. REV. 451, 470 (2011) (“The political response to the Chamber’s judgment in *Lautsi* is without precedent in European human rights terms. It caused a storm of political controversy in Italy and elsewhere in Europe.”).

14. The extensive footnote body of this Article should serve as evidence thereof.

International courts have been subject to increasing political pushback and backlash from politicians and domestic courts,¹⁵ and international law has also received similar criticisms on its legitimacy.¹⁶ Simultaneously, academics have increasingly asked questions about international court legitimacy.¹⁷ And no wonder—the fact that international courts attempt to decide deep, divisive societal issues in distant countries would have looked audacious not that long ago.¹⁸ That they sometimes succeed is, viewed from some distance, simply astonishing. As with domestic judicial review, the fundamental question is not so much whether what they do is right or wrong, but how they get away with it.¹⁹

Lautsi is the perfect case study to interrogate that question. In *Lautsi*, an international court attempted to intervene in an issue that cuts deeply into Italian identity. It failed. To make sense of this failure, two competing stories are all too often told. According to the first, *Lautsi* was a well-intentioned intervention in defense of liberal human rights which ultimately fell victim to populist backlash.²⁰ According to the second, the ECtHR was a victim not of populism, but of its own expansionist ambitions, and the Italian events

15. For a distinction between “pushback” and “backlash” against international courts, see *infra* note 49 and accompanying text.

16. See James Crawford, *The Current Political Discourse Concerning International Law*, 81 MOD. L. REV. 1, 22 (2018) (warning about an “increasing rhetoric of scepticism towards international law” that “may precipitate a larger-scale retreat into nativism and unilateralism”).

17. See *infra* Part I.

18. See Carlos S. Nino, *The Duty to Punish Past Abuses of Human Rights Put Into Context: The Case of Argentina*, 100 YALE L.J. 2619, 2638–39 (1991) (noting that “it may be idealistic” to hope that the international community could force countries to punish human rights violations); see generally Karen Engle, *Anti-Impunity and the Turn to Criminal Law in Human Rights*, 100 CORNELL L.R. 1069, 1091–103 (2015) (providing an account of the role of the Inter-American Court of Human Rights in adjudicating and developing anti-impunity norms, and exemplifying how the perceived role of international courts in domestic affairs quickly evolved). As noted by Argentinean jurist Carlos Nino—one of the architects of the trials to the *juntas*—the courts role in trying crimes against humanity evolved rapidly and as late recently as 1991. A few years later, international courts routinely decided over the validity of amnesties granted to those accused of crimes against humanities.

19. See *infra* note 41 and accompanying text.

20. See Erik Voeten, *Populism and Backlashes Against International Courts*, 18 PERSP. ON POL. 407, 418–19 (2020) (noting “Italian populists argued that the crucifix had become a symbol of Italian identity (rather than religion) with an undertone of excluding Islam from that identity” and using the case as evidence that “the ECtHR has become more restrained in response to criticisms”); see also Susanna Mancini, *The Crucifix Rage: Supranational Constitutionalism Bumps Against the Counter-Majoritarian Difficulty*, 6 EU. CONST. L. REV. 6, 27 (2010) (providing a narrative of the reactions against *Lautsi* I and concluding that they suggest that international courts have the challenge of “avoid[ing] provoking populist resentments when establishing rights in a context of cultural controversy”). Susanne Baer, a Justice at the German Constitutional Court, seems to share this view, including *Lautsi* as an example of misdirected criticism of the ECtHR. See Susanne Baer, *The Rule of—and not by any—Law. On Constitutionalism*, 71 CURRENT LEGAL PROBS. 335, 346 (2018) (asking rhetorically if “there [is] really too much law when a court asks a religious majority in a country to also consider the rights or religious minorities, in a public building?”).

were an all but natural reaction to an international court overstepping the boundaries of its legitimate, subsidiary authority.²¹

In a case like this one, the contrasting normative underpinnings of both stories prevent us from exploring the potential of international courts. They both depart from what should be expected from an international court such as the ECtHR and assess people's reactions against these expectations.²² Instead, I suggest we should seize a case like *Lautsi* to study the cultural meaning people attach to international courts' rulings. Once we engage in this quest, normative implications will likely follow. Paraphrasing historian Quentin Skinner, the limits of what courts can do are the limits of what they can hope to legitimize,²³ and it will probably not make sense to ask courts to do what they cannot possibly do.²⁴

In this Article, I perform a thorough evaluation of the political, social, and legal reactions to *Lautsi* to interrogate the contours of international courts' legitimacy when they intervene in "mega-political" questions.²⁵ Judicial interventions in societal debates, I will suggest, are not legitimated only by the soundness of their legal reasoning, but also by their potential to represent the community's "better self"²⁶—an articulated version of the nation's normative commitments. The history of the crucifix in Italy condenses profound issues of national identity which go routinely unspoken but that the ECtHR forced Italians to discuss.²⁷ When forced to respond to the ECtHR about the crucifix, Italians spontaneously talked about themselves—about who they are. Depending on the time and place, the

21. See Francesca Astengo, *Freedom of Religion Crucified? Secularism and Italian Schools Before the European Court of Human Rights*, 41 *POLITIQUE EUROPÉENNE* 12, 37 (2013) ("By relying on the margin of appreciation [in *Lautsi* II], the Grand Chamber has reaffirmed the subsidiary nature of the Convention, which was . . . not [conceived] to replace the national constitutional order system of guarantee of those rights."); Grégor Puppincq, *The Case of Lautsi v. Italy: A Synthesis*, 2012 *BYU L. REV.* 873, 876, 891 (2012) (praising the Grand Chamber for "correct[ing] some faulty assertions made by the Second Section" which had "failed to respect most of the implications of the principle of subsidiarity").

22. For a discussion of this strategy, see *infra* notes 54–55 and accompanying text.

23. QUENTIN SKINNER, *LIBERTY BEFORE LIBERALISM* 105 (1998) ("[W]hat it is possible to do in politics is generally limited by what it is possible to legitimise. What you can hope to legitimise, however, depends on what courses of action you can plausibly range under existing normative principles.").

24. In the context of judicial decisions taken during national security emergencies, Cass Sunstein argues that since "[o]ught implies can, . . . it is unhelpful to urge courts to adopt a role that they will predictably refuse to assume." See Cass R. Sunstein, *Minimalism at War*, 2004 *SUP. CT. REV.* 47, 51 (2004).

25. See *infra* notes 29–41 and accompanying text.

26. Paul W. Kahn, *Community in Contemporary Constitutional Theory*, 99 *YALE L.J.* 1, 22 (1988) ("The Court . . . represents the community's better self.") (reconstructing Bruce Ackerman's theory of constitutional review as articulated in Bruce Ackerman, *The Storrs Lectures: Discovering the Constitution*, 93 *YALE L.J.* 1013 (1984)).

27. See *infra* note 300 and accompanying text.

crucifix could tell a story about Italy's struggles for State *laicità*²⁸ and independence from the Vatican, signify a tension between immigration and cultural homogeneity, or represent a bastion of resistance against an expansively secularist Europe.

To my knowledge, this Article is the first in two important regards. First, it is the first law review piece to perform a thorough evaluation of the social, political, and legal reactions to the *Lautsi* cases. Second, and more importantly, it is the first to use this methodology to intervene in the ongoing academic conversation about international court legitimacy. To do so, I proceed as follows. In Part I, I survey the current research on international court legitimacy and discuss how studies like this can shed light on them. In Part II, I narrate the “prehistory” of the quarrels over the crucifix in public schools from the 1920s through the early 2000s. In Part III, I narrate the case of Adel Smith, an Italian Muslim who in 2003 unsuccessfully attempted to obtain a judicial removal of the crucifix, but unleashed a political storm similar to the one that unfolded after *Lautsi*. In Part IV, I describe the *Lautsi* litigation, in both its domestic and European stages. In Part V, I take stock of these stories and reflect upon the platform that Italian social discourse gave to these judicial interventions. In Part VI, I survey some later events concerning the crucifix to show that the *Lautsi* litigation, despite its enormous salience, failed to substantially shift the frameworks and rhetorical devices deployed to discuss the issue.

To succeed, the law must rest on communal identity. The two failed judicial interventions described in this article (one by a lone domestic judge, the other by a well-respected international court) show that perceptions of both eccentricity and foreignness conspire against that goal. The implication is clear: a national judge who twists the law to attack national identity can only be an impostor; an international court that does it can only be an intruder. In either case, the words they utter will fail to gain legitimacy as law.

II. INTERNATIONAL COURTS AND THE PEOPLE

In the last few decades, international courts have jumped into deciding what Ran Hirschl calls ‘mega-politics’: “matters of outright and utmost

28. *Laicità* is the Italian equivalent to the French *laïcité*, while *laico/laica* are the equivalent to the adjectives *laïc/laïque*. The principle of *laicità* is not explicitly recognized in the Italian constitution, although the Constitutional Court acknowledged it as an “overriding principle” of the constitutional order. Corte cost., 11 aprile 1989, n. 203, § 4 (It.). Unlike its French counterpart, Italian *laicità* is not understood as explicitly exclusionary of religion in the public space, but rather as equally welcoming to all forms of religious beliefs. See Astengo, *supra* note 21, at 17–18. I will be keeping them untranslated, so I can use “secularism” for the also existing and corresponding Italian “secolarismo.”

political significance that often define and divide whole polities.”²⁹ For example, international courts across the globe have been called to decide upon amnesties to human rights violators,³⁰ marriage equality,³¹ gender identity,³² the legality of ambitious land reforms,³³ the role of religion in education,³⁴ voting rights of prisoners,³⁵ abortion,³⁶ in-vitro fertilization,³⁷ surrogate motherhood,³⁸ and a virtually infinite etcetera.³⁹ Many questions can be, and have been, asked about whether an international court taking on such matters is normatively acceptable.⁴⁰ Still, there is a previous descriptive question whose answer remains mysterious: how do they get away with it?⁴¹

The answer is legitimacy. Famously, international courts lack the coercive means to enforce their decisions (the proverbial “sword and purse”)

29. Ran Hirsch, *The Judicialization of Mega-Politics and the Rise of Political Courts*, 11 ANN. REV. POL. SCI. 93, 93 (2008).

30. *See generally* Gelman v. Uruguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 221, (Feb. 24, 2011) (considering a Uruguayan amnesty law and the forced disappearance of a pregnant woman).

31. *See generally* Gender Identity, and Equality and Non-Discrimination of Same-Sex Couples, Advisory Opinion OC-24/17, Inter-Am. Ct. H.R. (ser. A) No. 24, (Nov. 24, 2017) (addressing the right to equality, non-discrimination, gender identity, and name change, as well as protection of same-sex relationships).

32. *See generally id.*; Goodwin v. United Kingdom, 2002-VI Eur. Ct. H.R. 27 (considering the alleged unfair treatment of a transgender woman following her gender reassignment surgery).

33. *See generally* Mike Campbell (Pvt.) Ltd. v. Republic of Zim., SADCT Judgment No. 2/2007, (Nov. 28, 2008) (considering a dispute regarding lands confiscated under a Zimbabwean land reform program).

34. *See generally* Folgero v. Norway, 2007-III Eur. Ct. H.R. 51 (considering the refusal to exempt a student from religious education in Norway).

35. *See generally* Hirst v. United Kingdom (No. 2), 2005-IX Eur. Ct. H.R. 187 (considering a blanket ban on British prisoners’ right to vote).

36. *See generally* A, B & C v. Ireland, 2010 Eur. Ct. H.R. 2032 (considering the right to abortion and Ireland’s prohibition of abortion).

37. *See generally* Evans v. United Kingdom, 2007-I Eur. Ct. H.R. 355 (considering the use of embryos for IVF treatment in the event that the other biological parent withdraws consent); Artavia Murillo et al. (“In Vitro Fertilization”) v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 257 (Nov. 28, 2012) (considering Costa Rica’s prohibition of IVF treatment).

38. *See generally* Paradiso and Campanelli v. Italy, App. No. 25358/12 (Jan. 24, 2017), <https://hudoc.echr.coe.int/fre?i=001-151056> (considering the Italian government’s removal of an infant from his surrogate parents upon returning from Russia, where gestational surrogacy was legal and the infant was born).

39. For a most recent and thorough review and classification of the circumstances in which international courts have intervened in “mega-political” issues, *see generally* Karen J. Alter & Mikael Rask Madsen, *The International Adjudication of Mega-Politics*, 84 LAW & CONTEMP. PROBS. 1 (2021).

40. *See, e.g.*, Andreas von Staden, *The Democratic Legitimacy of Judicial Review Beyond the State: Normative Subsidiarity and Judicial Standards of Review*, INT’L J. CONST. L. 1023, 1039–48 (2012) (providing a normative evaluation of the legitimacy of international review).

41. Martin M. Shapiro, *Judicial Power and Democracy*, in JUDICIAL POWER 21 (Christine Landfried, ed., 2019).

and depend instead on public support to function correctly.⁴² Additionally, to say that courts are obeyed when they are legitimate, in fact, borders on the tautological.⁴³ It is unsurprising, then, that the increased activity of international courts spurred interest in international court legitimacy.⁴⁴ In academia, this growth was exponential: in a classic 1997 article about the effectiveness of “supranational adjudication,” legitimacy appears as one undifferentiated factor among many that can promote an international court’s “effectiveness.”⁴⁵ In contrast, a well-received 2014 book about the “effectiveness of international courts” devotes an entire chapter to the issue.⁴⁶ Since then, a constant stream of monographs and edited volumes have been published on the topic.⁴⁷ Prominent scholars who previously deemed the issue unworthy of interest turned their attention towards it.⁴⁸ But the attention to international courts’ legitimacy was not limited to academics. Political actors also started to question the legitimacy of international courts, in what is commonly described as “backlash.”⁴⁹

42. See, e.g., James L. Gibson, Gregory A. Caldeira & Vanessa A. Baird, *On the Legitimacy of National High Courts*, 92 AM. POL. SCI. REV. 343, 343 (1998) (“Not even the most powerful courts in the world have the power of the ‘purse’ or the ‘sword’; with limited institutional resources, courts are therefore uncommonly dependent upon the goodwill of their constituents for both support and compliance.”); ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 188 (Harvey C. Mansfield & Debra Winthrop, eds., Univ. Chicago Press 2002) (1835) (noting that American Supreme Court Justices’ “power is immense; but it is a power of opinion. They are omnipotent as long as the people consent to obey the law; they can do nothing when they scorn it.”).

43. See Shapiro, *supra* note 41 (“The answer that [judicial] review works where the citizenry sees it as legitimate is too tautological to be satisfying.”).

44. Laurence R. Helfer & Karen J. Alter, *Legitimacy and Lawmaking: A Tale of Three International Courts*, 14 THEORETICAL INQUIRIES L. 479, 481 (2013) (“The growing political salience of [international courts’] rulings has generated increased scrutiny of the legitimacy of [international courts].”).

45. Laurence R. Helfer & Anne-Marie Slaughter, *Toward a Theory of Effective Supranational Adjudication*, 107 YALE L. J. 273, 284–85 (1997).

46. YUVAL SHANY, *ASSESSING THE EFFECTIVENESS OF INTERNATIONAL COURTS* 137–58 (2014).

47. The list is enormous, as both Cambridge and Oxford University Presses have series dedicated to international courts, and many of the books published therein are explicitly devoted to the issue. See, e.g., *LEGITIMACY AND INTERNATIONAL COURTS* (Nienke Grossman et al. eds., 2018); *INTERNATIONAL COURT AUTHORITY* (Karen J. Alter et al. eds., 2018).

48. Robert Keohane, for example, severely criticized Thomas Franck’s *The Power of Legitimacy* after its publication noting that the concept of legitimacy was empirically unprovable and logically circular. Compare Robert Keohane, *International Relations and International Law: Two Optics*, 38 HARV. INT’L L. J. 487, 489 (1997) (“‘Legitimacy’ is difficult to measure independently of the compliance that it is supposed to explain. For instance, Franck describes a rule’s compliance ‘pull power’ as ‘its index legitimacy.’ Yet legitimacy is said to explain ‘compliance pull,’ making the argument circular.”), with Allen Buchanan & Robert O. Keohane, *The Legitimacy of Global Governance Institutions*, 40 ETHICS & INT’L AFF. 405, 407 (2006) (“[d]etermining whether global governance institutions are legitimate—and whether they are widely perceived to be so—is an urgent matter”, since “in a democratic era, multilateral institutions will only thrive if they are viewed as legitimate by democratic publics.”).

49. Forms of resistance or backlash against international courts have multiplied in recent years. See, e.g., Mikael Rask Madsen et al., *Backlash Against International Courts: Explaining the Forms and*

Despite this rise in attention, however, it remains true that most studies on courts' legitimacy attempt to describe moral (or normative) legitimacy—that is, the moral acceptability of authority according to some normative theory. Fewer studies have focused on their sociological (or descriptive) legitimacy—that is, whether the authority is considered morally legitimate by its addressees, regardless of our own normative assessment of it.⁵⁰ This imbalance in attention exists for both domestic and international courts,⁵¹ and calls to be corrected.

Knowing whether an international court (or any institution) is sociologically legitimate implies more than merely measuring its static levels of “support.” An institution is legitimate, in the descriptive sense, not merely because people happen to support it,⁵² but rather because it acts according to

Patterns of Resistance to International Courts, 14 INT'L J. L. CONTEXT 197, 197 (2018) (accounting for the fact that “[r]ecent years have seen growing resistance to international courts . . . in many parts of the world,” and developing an analytical framework for future research). For an account of how domestic judges' resistance to international judicial review constitutes a “wave” throughout the world, see Doreen Lustig & J.H.H. Weiler, *Judicial Review in the Contemporary World—Retrospective and Prospective*, 16 INT'L J. CONST. L. 315, 345–69 (2018).

50. See generally Richard H. Fallon, Jr., *Legitimacy and the Constitution*, 118 HARV. L. REV. 1787 (2005) (providing a classic account of these accounts of legitimacy in American constitutional law).

51. For a classic account and critique of these accounts of legitimacy in American constitutional law, see generally Richard H. Fallon, Jr., *Legitimacy and the Constitution*, 118 HARV. L. REV. 1787 (2005). Fallon notes that “only scant scholarly attention has been paid to the Court’s descriptive or sociological legitimacy problems.” For a similar observation regarding international courts, see Erik Voeten, *Public Opinion and the Legitimacy of International Courts*, 14 THEORETICAL INQUIRIES L. 411, 412 (2013) (noting that despite their growing importance, “we know surprisingly little about public support for international courts.”). See also Georg Vanberg, *Constitutional Courts in Comparative Perspective: A Theoretical Assessment*, 18 ANNU. REV. POLIT. SCI. 167, 177 (2015) (“What explains public support for courts as independent institutions, especially if courts constrain popularly elected and accountable policy makers? This question takes a back seat in much work in this tradition. . . because the focus of the analysis is on understanding how judges and legislators behave if public support is the key enforcement mechanism for judicial But “closing the loop” for these exogenous explanations requires an explicit theory of the origins of public support for judicial authority.”).

52. See DAVID EASTON, *A SYSTEMS ANALYSIS OF POLITICAL LIFE* 273 (1965) (noting that some empirical studies equate sociological legitimacy with David Easton’s concept of “diffuse support,” which describes the “reservoir of favorable attitudes or goodwill that helps members to accept or tolerate outputs to which they are opposed or the effects of which they see as damaging of their wants”). Although it might be true that legitimacy and diffuse support correlate, they are not identical, since support can be granted for a variety of reasons other than legitimacy, such as enlightened self-interest. See Sanford C. Gordon & Gregory A. Huber, *The Empirical Study of Legitimacy: Normative Guidance for Positive Analysis*, in *POLITICAL LEGITIMACY* 328, 334–36 (Jack Knight & Melissa Schwartzberg eds., 2019) (discussing the concepts of legitimacy and support in relationship to empirical studies about the legitimacy of institutions and of courts specifically). Some of the few quantitative studies about support for international courts conflate legitimacy and diffuse support. See, e.g., James L. Gibson & Gregory A. Caldeira, *The Legitimacy of Transnational Legal Institutions: Compliance, Support, and the European Court of Justice*, 39 AM. J. POL. SCI. 459, 460 (1995) (“Legitimacy is institutional support (diffuse support).”).

the normative beliefs people hold about it.⁵³ An investigation of the sociological legitimacy of international review, therefore, will demand that we explore and reconstruct people's beliefs about the institution.

Scholars have devised some strategies to explore and reconstruct those beliefs. A first path is to assume that normative and sociological legitimacies align.⁵⁴ From this “what-you-reap-is-what-you-sow” perspective, typical of the internal point of view of the legal system, so long as courts pursue their stated goals, people will realize this, and sociological legitimacy will follow.⁵⁵ In the same way that a “myth of legality” is said to sustain the legitimacy of the American Supreme Court,⁵⁶ citizens of the world would be content with their international courts so long as they dispassionately serve international law.⁵⁷ This type of reasoning needs to assume that people's

53. See DAVID BEETHAM, *THE LEGITIMATION OF POWER* 11 (2d ed. 2013) (“A given power relationship is not legitimate because people believe in its legitimacy, but because it can be *justified in terms of* their beliefs.”) (emphasis in original).

54. An example of this line of reasoning done quite explicitly can be found in Robert Keohane, *The Contingent Legitimacy of Multilateralism* 2 (GARNET Working Paper No. 09/06, 2006), <https://warwick.ac.uk/fac/soc/pais/research/researchcentres/csgr/garnet/workingpapers/0906.pdf> (“When the relevant audiences believe in a particular normative theory, normative legitimacy tends to coincide with sociological legitimacy.”). Sometimes this assessment is done surreptitiously. See, e.g., Nienke Grossman, *Legitimacy and International Adjudicative Bodies*, 41 *GEO. WASH. INT'L L. REV.* 107, 115 (2009) (defining a legitimate adjudicative body as one “whose authority is perceived as justified,” and declaring that the concept is “similar to sociological legitimacy, and may include elements of moral legitimacy; at least two of the three criteria offered to assess the legitimacy of international courts (that the court be “fair and unbiased” and that the court be “transparent and infused with democratic norms,”) are overtly normative). She contends that when an international tribunal has those characteristics, international actors are more “likely to perceive a tribunal as legitimate,” *id.* at 121–22, although she declares it is not her purpose to “provide empirical support” for the hypothesis, *id.* at 123. In yet other occasions, authors are ambiguous as to whether they are speaking of moral or sociological legitimacy, which allows them to jump from one to the other with little warning. When the distinction is obscured, leaps are easily missed. For example, it might be stated that failures in normative legitimacy can entail losses in sociological legitimacy, without showing the causal mechanism that allows this leap. See, e.g., SHANY, *supra* note 46, at 137–58 (differentiating the two concepts at 138–40, but treating both of them jointly elsewhere).

55. Perhaps the best example of this type of reasoning is Justice Scalia's dissent in *Planned Parenthood v. Casey*, 505 U.S. 833, 999–1000 (1992) (Scalia, J., dissenting) (admonishing his colleagues that “[i]nstead of engaging in the hopeless task of predicting public perception . . . Justices should do what is legally right,” since if both the Court and the public keep on conceiving the Court's task as “essentially lawyers' work,” legitimacy will come on its own).

56. See generally John M. Scheb II & William Lyons, *The Myth of Legality and Public Evaluation of the Supreme Court*, 81 *SOC. SCI. Q.* 928 (2000) (examining the public's perception of the Supreme Court and how the notion that the Court's decisions are based on legal principles guides that perception); Vanessa A. Baird & Amy Gangl, *Shattering the Myth of Legality: The Impact of the Media's Framing of Supreme Court Procedures on Perceptions of Fairness*, 27 *POL. PSYCH.* 597 (2006) (highlighting that people are less deferential to the Supreme Court when its processes are depicted as political rather than legal).

57. For a discussion of whether the “myth of legality” is applicable to international courts, see Yonatan Lupu, *International Judicial Legitimacy: Lessons from National Courts*, 14 *THEORETICAL*

beliefs about international courts' normative justifications align with those that international courts predicate about themselves. This alignment, however, needs to be proved rather than assumed away, which necessarily entails empirical investigation of people's thoughts. For instance, an international court can insist that its legitimacy is built upon its application of international human rights or liberalization of international trade, but this insistence will be of little help with national constituencies if the people do not believe these are valuable enterprises in the first place.

Some authors have followed the empirical route to reconstruct beliefs on courts' legitimacy. The most salient example is Başak Çali, Anne Koch, and Nicola Bruch's study about the sociological legitimacy of the ECtHR.⁵⁸ They focus on the beliefs of legal and political elites, which they elicit through interviews, rather than the beliefs of the population at large. This focus is undoubtedly important, as elites greatly condition states' reactions to international courts' rulings.⁵⁹ Moreover, elites' beliefs spill over onto the general population, as elites provide "legitimacy accounts that the public at large depend on as sources of information and opinion."⁶⁰ But this approach is finally insufficient: the extent to which the population at large actually follows elites' ideas in order to form their own beliefs on legitimacy cannot be assumed and needs to be studied on its own.

What is lacking in the study of international courts' legitimacy is an account of the beliefs of the population at large about their appropriate role. This presents an obvious challenge: international court authority is not a

INQUIRIES L. 437, 449–51 (2013).

58. This is the path taken by Başak Çali et al., *The Legitimacy of Human Rights Courts: A Grounded Interpretivist Analysis of the European Court of Human Rights*, 35 HUM. RTS. Q. 955 (2013). However, there are two main differences in their methodology and mine. First, they are explicitly focused on legal and political elites' beliefs about the ECHR, and somehow the broader public will rely on them to elaborate their own opinions. *Id.* at 962. Second, they conduct "elite interviews," assuming that this gives them a more complete picture of their beliefs than news, which is biased by the newsworthy value of conflictive episodes. *Id.* By contrast, I study written materials available in the public sphere, both by elites and non-elites. Following Beetham, I assume that the relevant beliefs for the study of legitimacy are those that are available in the public sphere and constitute public discourse, not those that are privately held by actors. See BEETHAM, *supra* note 53 (arguing that all necessary evidence to assess beliefs about legitimacy "is available in the public sphere, not in the private recesses of people's minds").

59. See Matthew Kim, *Public and Elite Opinion on International Human Rights Law: Completing the Causal Chain of the Domestic Compliance Mechanism*, 18 J. HUM. RTS. 419, 420 (2019) ("A focus on elites is especially warranted because elites are critical actors in not only ratifying international human rights treaties but also implementing the treaties. Without elite willingness to implement human rights treaties . . . the mere ratification of treaties and public support for compliance may not lead to actual compliance.").

60. Çali et al., *supra* note 58, at 962. The relationship between elite and public opinion on international norms arguably runs both ways. See Kim, *supra* note 59, at 420 (arguing that "public demand for compliance is associated with increased 'elite willingness to comply' with international human rights norms.").

topic to which the general public devotes much attention. We are, therefore, doomed to reconstruct those ideas indirectly.⁶¹ There are situations, however, in which international courts' decisions on mega-political issues become salient and controversial enough as to gain the center of public attention. On these occasions, judges, lawyers, politicians, and civil society are forced to voice their previously taken-for-granted ideas about the role of courts and international law in the governance of societal affairs.⁶² Examining public discourse at these rare occasions is our best shot as reconstructing people's beliefs about international court legitimacy.⁶³ This is what the following Parts do.

III. THE PREHISTORY OF THE CRUCIFIX

The crucifix, we hear over and over, "has always been there."⁶⁴ But what "always" means for a country less than two centuries old is not clear. If nation-states are "imagined communities,"⁶⁵ the struggle over its symbols and their significance crystallizes a momentous political contest. If a symbol comes to stand for an entire nation, it must be traced back to the same immemorial, imaginary past.

However, if one relies on archives rather than myth, it is difficult to trace the presence of crucifixes in public schools and courtrooms in Italy. Before Italian unification, the Constitution of the Kingdom of Piedmont-Sardinia, which would become the Constitution of unified Italy, provided that "the Roman catholic apostolic religion [was] the only religion of the

61. See JON ELSTER, MAKING SENSE OF MARX 459 (reprt. 1994) (1985) ("Ideologies are elusive entities. Beliefs, like electrons, are unobservable: they must be identified indirectly.").

62. The idea that disruptive events push people into revealing their "background expectations" about the social order goes back to Harold Garfinkel's "breaching experiments," in which he asked his students to breach an implicit social in their homes (like, for example, treating their parents with excessive formality). After some time, the objects of the experiment complained and pointed at the reason why the behavior of the student was being so obnoxious, incidentally revealing the social norms that implicitly governed their relationships. See generally Harold Garfinkel, *Studies of the Routine Grounds of Everyday Activities*, 11 SOCIAL PROBLEMS 225–50 (1964). In the context of court legitimacy, the idea that controversial court cases pose an opportunity to assess court legitimacy in the eyes of the public has been voiced by political scientists and legal scholars in the context of the U.S. Supreme Court. See Dino P. Christenson & David M. Glick, *Chief Justice Roberts's Health Care Decision Disrobed: The Microfoundations of the Supreme Court's Legitimacy*, 59 AM. J. POL. SCI. 403, 403 (2015) ("[W]hile high-salience cases are unusual, they are also the cases with the potential to provide the public with new information that makes reassessing the Court feasible.").

63. See BEETHAM, *supra* note 53, at 13 (explaining that the importance of public discourse for assessing people's beliefs about legitimacy is paramount, since all necessary evidence to assess beliefs about legitimacy "is available in the public sphere, not in the private recesses of people's minds").

64. CHIARA GALLINI, IL RITORNO DELLE CROCI [THE RETURN OF THE CROSSES] 7 (2009).

65. See generally BENEDICT ANDERSON, IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM (Verso ed., 3d ed. 2006) (exploring the concept of "imagined communities").

State.”⁶⁶ Accordingly, an 1860 Royal Decree required “each school . . . without fail [to] be equipped . . . with a crucifix.”⁶⁷

However, the first documented fights over the crucifix date back to the early 20th century. In 1920, for example, a congress of socialist local administrators of the Novara province decided to unhang “the symbol of pain and death” from all public schools under their jurisdiction.⁶⁸ The regional government took measures to prevent the crucifix from being removed.⁶⁹ Local populations also fiercely opposed the removal: the cover of one of the leading magazines of the time featured an illustration of a demonstration by about five hundred women protesting the removal in front of one of the affected town’s governments. Very graphically, the illustrator portrays them wielding their crucifixes as weapons.⁷⁰

It would have been fascinating to see this political conflict unfold, but soon after, the March on Rome dramatically changed the course of Italian politics. As a part of a larger trend of support for Catholicism in education designed to please the Vatican,⁷¹ Benito Mussolini signed two decrees in 1924 and 1928 which “restored” the crucifix to the classroom.⁷² Per the decrees, every classroom had to be furnished with both a crucifix and the portrait of the King.⁷³ Therefore, Mussolini’s decrees mandating the exhibition of the crucifix in public schools did not merely formalize an already existing tradition, but rather were understood as a restoration of the crucifix to its natural place.⁷⁴

But this chronology is probably pointless: it belongs to the nature of sacred things to look as if they were always there.⁷⁵ Although in subsequent

66. Lautsi II, *supra* note 12, ¶ 17.

67. *Id.*

68. See GALLINI, *supra* note 64, at 110–11 (quoting the circular that reads: “[I]t is considered to be contrary to a civil and healthy education to continuously display to the look of the youth, which should yearn for life, the symbol of pain and death”). However, they watered down the tone of the message when communicating the decision to school principals: “[I]t is not true that, as our adversaries are blathering, we have chosen to take the crucifix out of classrooms to offend religious sentiment of citizens, nor because we ignore the majestic work accomplished by the Nazarene for the underclass, nor because of iconoclasm, but only because of the respect we hold for all religious beliefs[.]” *Id.* at 111.

69. *Id.* at 112.

70. Cover, LA DOMENICA DEL CORRIERE, Jan. 16–23, 1921, reproduced in GALLINI, *supra* note 64, at 65.

71. Frank J. Coppa, *From Liberalism to Fascism: The Church-State Conflict over Italy’s Schools*, 28 HIST. TCHR. 135, 142 (1995) (noting that with regard to education, Mussolini made a number of “conciliatory moves to win Vatican approval” including the restoration of the crucifix).

72. GALLINI, *supra* note 64, at 7–8.

73. *Id.*

74. See *id.*

75. *Id.* at 8 (“Sacred icons—precisely because they have turned ‘sacred’ because of a consecrating act—have the characteristic of appearing before our eyes as always given: things have always been this

iterations of the conflict we find occasional references to the fascist origins of the decrees, Italians argue, for and against, under the premise that “the crucifix has always been there.”⁷⁶ Even in the eyes of the ECtHR, the crucifix was there before Italy even existed.⁷⁷ Despite subsequent changes in the State-Church relationship and educational reforms, Mussolini’s decrees are still considered to be in force.⁷⁸

Once restored in the 1920s, the crucifix stayed undisturbed for six decades.⁷⁹ In 1984, Italy and the Vatican modified their so-called Lateran Pacts, signed under Mussolini in 1929, in which Italy guaranteed Catholicism as the State religion. While the 1984 new Concordat assured the Catholic Church of the necessary guarantees to fulfill its mission, it explicitly stated that Church and State were, “each in its own order, independent and sovereign,” and that “the principle according to which Catholic religion is the only State religion is no longer in force.”⁸⁰

This new legal framework encouraged newborn attacks over the crucifix. The most prominent attack happened in January 1988, when public school teacher Maria Vittoria Mogliano sent a letter to her school’s principal asking for the removal of all crucifixes from the building.⁸¹ Once the issue was submitted to the consideration of the Minister of Public Education, she ratified her request: If the crucifixes were not “officially” removed, she would “consider [herself] authorized by the school principal to defend [her] freedom of conscience in the only possible way, that is, not coming to the school.”⁸² Before the deadline, the question was sent to the Council of State to decide, and the school’s teachers collectively decided not to take any action until the issue was legally solved.⁸³

In the meantime, the issue was covered by the national press, including some of Italy’s most prominent newspapers.⁸⁴ One opinion, however, gained prominence for decades. Natalia Ginzburg, a renowned Jewish⁸⁵ novelist

way, and they could not be otherwise.”).

76. GALLINI, *supra* note 64, at 7.

77. Lautsi I, *supra* note 1, ¶ 16.

78. *See infra* note 89 and accompanying text for a discussion of the Consiglio di Stato decisions of 1988 and 2006.

79. GALLINI, *supra* note 64, at 15.

80. Concordato lateranense [Lateran Concordat], It.-Vatican, Feb. 18, 1984, protocollo addizionale [additional protocol] §1.

81. MARCELLO MONTAGNANA, COME SCROCFIGGERE LO STATO [HOW TO DECRUCIFY THE STATE] 39 (Unione degli Atei e degli Agnostici Razionalisti ed., 2005).

82. *Id.*

83. *Id.* at 42–43.

84. *See id.* at 29–45 (discussing the press coverage throughout).

85. Natalia Ginzburg, one of the most important Italian novelists of the 20th century, was the daughter of a Jewish father and a Catholic mother but was raised not observing any religion. She

who had just ended her term as a congresswoman for the independent left, published an opinion piece in *L'Unità*, the Communist Party's official newspaper: "Do not remove that crucifix: It is the sign of human pain."⁸⁶ As announced from its very title, Ginzburg argued that the crucifix symbolized universal values, common to Catholics, Jews, and atheists: the crucifix represents "all those . . . betrayed and martyred because of their faith, for their neighbors, for future generations."⁸⁷

Ginzburg's article provided a blueprint for subsequent defenses of the crucifix in secular terms. Indeed, a critic would later call it "the Gospel according to Natalia."⁸⁸ It also anticipated the view that the State Council, the highest administrative court in Italy, would soon adopt. When the Minister of Education asked for its "opinion," the Council said, "aside from its meaning for believers, [the crucifix] represents the symbol of Christian culture and civilization, in its historical root, as a universal value, independent from a specific religious confession."⁸⁹ Just as Ginzburg's article became the Gospel for civil society, the 1988 Council of State decision has been tirelessly invoked in official documents.⁹⁰

Saved once again, the crucifix was set to enjoy a decade of tranquility, aside from some minor perturbations.⁹¹ However, in October 2001, the

converted to Catholicism before her second marriage, although she always declared to feel both Jewish and Catholic. NADIA CASTRONUOVO, NATALIA GINZBURG: JEWISHNESS AS MORAL IDENTITY 1–8 (George Ferzoco ed., 2010). However, people would later point at this article, emphasizing her Jewish, and sometimes supposedly atheist, identity. See, e.g., Marco Travaglio, *Ma io difendo quella croce [But I Defend that Cross]*, IL FATTO QUOTIDIANO, Nov. 5, 2009, <https://www.ilfattoquotidiano.it/2009/11/05/ma-io-difendo-quella-croce/12332/>.

86. Unlike mandatory religious teaching, Ginzburg argued, "the crucifix does not teach anything; it stays silent." The crucifix, according to Ginzburg, "is the image of the Christian revolution, which spread the idea of equality among men absent up to then." It should not offend Jews ("was not Jesus himself Jewish and persecuted . . . just as millions of Jews in the Lager?") nor atheists (for whom the crucifix represents "all those . . . betrayed and martyred because of their faith, their neighbors, for future generations"). Natalia Ginzburg, Intervento, *Non togliete quel crocifisso: E il segno del dolore umano [Don't Remove that Crucifix: It is the Sign of Human Pain]*, L'UNITÀ, Mar. 25, 1988, at 2.

87. *Id.*

88. According to historian Sergio Luzzatto, Ginzburg's article was "the Ur-Text, the primordial containing all (or almost all) the truisms, nonsense, inexactitudes that would sustain the arguments of so-called defenders of the crucifix for decades to come." SERGIO LUZZATTO, IL CROCIFFISSO DI STATO [CRUCIFIX OF STATE] 13 (2011).

89. Cons. Stato, 27 aprile 1988, n. 63/88.

90. All bills introduced in Parliament quote this State Council decision. E.g. Disegno di Legge 19 settembre 2002, n. 1717, Legisl. ital. II. N. 1717.8 (It.) (Disciplina per l'esposizione del Crocifisso nelle scuole e in tutti gli edifici pubblici [Regulation of the Exhibition of the Crucifix in Schools and all Public Buildings]); Proposta di Legge 15 maggio 2002, n. 2749, Legisl. ital. III Campagne n. 387 (It.) (Norme per disciplinare l'esposizione del Crocifisso in tutti i pubblici uffici e le pubbliche amministrazioni della Repubblica [Norms to Regulate the Exhibition of the Crucifix in all Public Buildings and Public Administrations in the Republic]).

91. The most relevant perturbation happened in 1994, when Marcello Montagnana (Mogliano's

removal of a crucifix from a classroom upon the arrival of a Muslim pupil spiraled into more than what a well-intentioned teacher could have expected.⁹² Parents protested, the school principal restored the crucifix to its place,⁹³ and even the local Muslim community deemed the act “excessive.”⁹⁴ However, as the nationwide criticism coming from all sides of the political spectrum started to fade out,⁹⁵ Adel Smith, an Egypt-born Italian Muslim, appeared on national prime-time television claiming the leadership of an utterly unrepresentative “Union of Italian Muslims.” During a debate about the crucifix, he described it as a “miniature corpse stuck to a piece of wood” that could shock young students such as his children. Outrage followed. A center-right senator asked for the application of blasphemy laws,⁹⁶ while another one straightforwardly wondered whether it would not be better to expel Smith from the country.⁹⁷ Catholic opinion leaders accused the show’s anchorman of being “irresponsible” for letting Smith speak in that way.⁹⁸ Members of Parliament introduced requests to reaffirm the obligation to exhibit crucifixes in schools and to extend it to other public buildings.⁹⁹ In

husband, and nephew of the Italian Communist Party historic leader, Palmiro Togliatti) refused to serve as a poll clerk if polling stations displayed crucifixes. *Niente crocifisso per il nipote di Togliatti* [No Crucifix for Togliatti’s Nephew], LA STAMPA, Feb. 11, 1998, at 5. Montagnana was initially convicted to pay a symbolic fine but was later acquitted by the Court of Cassation. Cass., sez. IV penale, 1 marzo 2000, n. 439.

92. *See I genitori contestano un’insegnante di La Spezia* [Parents Challenge a Teacher in La Spezia], LA STAMPA, Oct. 30, 2001, at 23.

93. The school principal was reported to have stated that “tolerance . . . is important, ‘but it is not fair that Christians are made to quit their own identity.’” *Id.*

94. PAOLO BERTEZZOLO, PADRONI A CHIESA NOSTRA: VENT’ANNI DI STRATEGIA RELIGIOSA DELLA LEGA NORD [MASTERS AT OUR OWN CHURCH: TWENTY YEARS OF RELIGIOUS STRATEGY OF THE NORTH LEAGUE] 155–56 (EMI, 2011).

95. Livia Turco, Former Minister for Social Solidarity for the Democratic Party, said the removal was “excessive, but born out of a valid concern: the teacher was interested to make the classroom hospitable for the student, but she made an excess, because I don’t think that [hospitality] should go against our religion, our culture, our rules.” *Torna in classe il crocifisso tolto dal muro* [The Crucifix Removed from the Wall Returns to Class], LA REPUBBLICA, Oct. 31, 2001, at 4. An official of the then-rising far-right party North League expressed a stronger view: “Acts of this kind, even when performed in good faith, are the result of superficial evaluations of the impact that Islamic culture can have in our society. We cannot accept passively the subordination of our culture and our religious traditions to an Islamic integralism increasingly aggressive and determined.” *Id.*

96. *Insulti al crocifisso in tv, “Avvenire” contro Vespa “Un errore lasciare parlare così quel musulmano”* [Insults to the Crucifix in TV. “Avvenire” Against Vespa “A Mistake Letting that Muslim Talk”], CORRIERE DELLA SERA, Nov. 8, 2001.

97. Interrogazione di Senatore Sodano Calogeroa, 25 settembre 2002, n. 4-03008, Legisl. ital. XIV n. 14-242^a, at 82–83 (It.) (Interpellation Request by Senator Sodano Calogero).

98. *Islam – Predrizzi, Intervenga Magistratura su Unione Musulmani* [Islam – Predrizzi: Judiciary to Intervene on Union of Muslims], AGENZIA GIORNALISTICA ITALIA, Nov. 9, 2001 (“Just imagine what would have happened should a Christian have vituperated Allah, Mohammed or the Quran in that way in a Muslim country.”).

99. *See Camera – Minoli (FI), Crocifisso e foto Ciampi negli uffici* [Camera – Minoli (FI), Crucifix

the following weeks, the media kept the crucifix issue on the agenda by reporting several incidents, the most relevant of which was probably the removal of the crucifix from the main room of the Constitutional Court.¹⁰⁰

The Minister of Education of the center-right government inaugurated the following academic year with the announcement that, following recent statements made by the Pope,¹⁰¹ displaying the crucifix would be rendered mandatory in all public schools.¹⁰² She recalled the sentence of the State Council protecting the crucifix from any accusation of discrimination and echoed its definition as a “symbol of our Christian civilization, its historical root, and universal value.”¹⁰³ The North League, a rising far-right party and by then a minor actor within the government coalition,¹⁰⁴ received the news with enthusiasm, reintroducing a bill in Parliament in support.¹⁰⁵ The leader of the North League in the Lower House emphatically defended the proposal “against foreigners who act as if they owned the place, and against the attacks of insolent Muslims.”¹⁰⁶ However, inside the government party, the Forza Italia, the president of the Culture Committee warned that the “crucifix should not be used against other cultures.”¹⁰⁷

Some voices opposed the initiative. Most prominently, the leader of the Italian Jewish Communities denounced the North League proposal as a “warning directed to Muslims” that could trigger undesirable chain reactions. “Our society has become multicultural, like it or not.”¹⁰⁸ Instead of the crucifix, he proposed, school walls should display the DNA double-

and pictures of Ciampi in the Offices], AGENZIA GIORNALISTICA ITALIA, Mar. 7, 2002 (reporting a request that parliamentarians keep a crucifix and photo of the President in their offices); see also Jacopo Iacoboni, *La battaglia della Lega: un crocefisso in ogni ufficio*, [*The Battle of the League: A Crucifix in Every Office*], LA STAMPA, May 15, 2002, at 5 (reporting on a bill that would make it compulsory to display the crucifix in schools and other public places).

100. See generally LUCA OZZANO & ALBERTO GIORGI, EUROPEAN CULTURE WARS AND THE ITALIAN CASE 141 (2015) (reviewing this and other instances of scandals over the presence of the crucifix in public buildings).

101. The Pope’s words had been reported by national news. *Esponete il crocefisso nelle scuole!* [*Display the Crucifix at Schools!*], CORRIERE DELLA SERA, Sept. 16, 2002.

102. Giulio Benedetti, *Letizia Moratti: Il crocefisso tornerà nelle aule* [*Letizia Moratti: The Crucifix Will Come Back to the Classroom*], CORRIERE DELLA SERA, Sept. 19, 2002.

103. *Id.*

104. Since then, the North League has rebranded itself merely as “League,” to get past its northern-secessionist origins. Since North League is still the official name of the party, I keep this denomination throughout the text.

105. Benedetti, *supra* note 102; Disegno di Legge n. 1717/2002 (It.), *supra* note 90.

106. Claudio Lazzaro, *Ferdinando Adornato: una decisione che condivido, ma non usiamolo contro le altre culture* [*Ferdinando Adornato: A Decision I Agree With, But Let’s Not Use It Against Other Cultures*], CORRIERE DELLA SERA, Sept. 19, 2002.

107. *Id.*

108. Lorenzo Salvia, *Amos Luzzatto: sono perplesso e preoccupato* [*Amos Luzzatto: I am Puzzled and Concerned*], CORRIERE DELLA SERA, Sept. 19, 2002.

helix, “the only sign for humankind.”¹⁰⁹ Representatives of non-Catholic Christian sects joined in his concern,¹¹⁰ and so did a significant group of center-left senators, who requested to interpellate the Minister to ask whether she thought she was risking a “partisan or ideological” use of the crucifix.¹¹¹ Romano Prodi, a Catholic, former and future center-left Prime Minister, and then-president of the European Commission, stated that it was “hard to think to impose [the crucifix], precisely because it has such a deep value.”¹¹² School principals and students all over the country were reported to oppose the initiative.¹¹³ A few days later, responding to an interpellation by members of the Senate Committee of Education, the Undersecretary of Education assured interpellating senators that no new laws or decrees would be enacted.¹¹⁴ Once again, the question amounted to nothing.

IV. THE CASE OF ADEL SMITH

The following year, the intensity of the conflict reached new heights. Adel Smith insisted that a surah of the Quran be hung next to the crucifix in his children’s classroom in the small town of Ofena, L’Aquila province. The teacher acquiesced, only to be reprimanded by the Minister of Education herself, who noted that “no religious symbol other than the crucifix” could be stuck on schools’ walls.¹¹⁵ The school principal promptly removed the new ornament. Frustrated, Smith channeled his request judicially.

109. *Id.*

110. *Crocifisso: Chiese battiste e valdesi criticano proposta Moratti [Crucifix: Baptist and Waldensian Churches Criticize Moratti’s Proposal]*, AGENZIA GIORNALISTICA ITALIA, Sept. 19, 2002.

111. Interrogazione di Senatori Tessitore, Acciarini & Franco Vittoria 24 settembre 2002, n. 3-00627, *Legisl. ital. XIV n. 239, (It.) (Interpellation Request by Senators Tessitore, Acciarini, and Franco Vittoria)*.

112. Alessandra Arachi, *Crocifisso a scuola, la Chiesa frena la Lega [Crucifix at School: The Church Stops the North League]*, *CORRIERE DELLA SERA*, Sept. 21, 2002.

113. Alessandro Capponi, *Ritorno del crocifisso nelle aule, molti presidi frenano [Return of the Crucifix to Classrooms: Many School Principals Stop It]*, *CORRIERE DELLA SERA*, Sept. 20, 2002; see also *22° Resoconto stenografico [22nd Stenographic Report]*, SENATO DELLA REPUBBLICA, at 4 (Sept. 26, 2002) <https://senato.it/service/PDF/PDFServer/DF/69410.pdf> (quoting Valentina Area, Undersecretary for Education, University and Research, responding to an interpellating senator by stating that the Ministry of Education took note of this resistance, and ventured that it was caused by the incorrect understanding that the imposition of the crucifix had a confessional goal, and therefore as a sign that “the value of the crucifix as a universal symbol” should still be a goal for the government).

114. *Crocifissi, ogni scuola deciderà da sola [Crucifixes: Each School Will Decide on its Own]*, *CORRIERE DELLA SERA*, Sept. 27, 2002. Soon after, the Minister of Education released a circular announcing a future circular that would explain how to make crucifixes available in public schools. *Oggetto: Esposizione del crocifisso nelle aule scolastiche [Regulation Regarding the Display of the Crucifix in School Classrooms]*, ARCHIVIO DELL’AREA ISTRUZIONE (Oct. 3, 2002), <http://archivio.pubblica.istruzione.it/normativa/2002/dir31002.shtml>.

115. *Il ministro Moratti: “In aula si può affiggere solamente il crocifisso” [Minister Moratti: “In the Classroom, Only the Crucifix Can be Stuck”]*, *IL GIORNALE*, Sept. 25, 2003.

He immediately obtained an injunction from a trial judge in L'Aquila province, who ordered the removal of the crucifix in Smith's children's school.¹¹⁶ "A minimum delving" into this question, Judge Mario Montanaro asserted, leads to the conclusion that Mussolini's decrees ("evident symptoms of the neo-confessionalism of the fascist regime") are incompatible with State *laicità*: "The explicit abrogation of the principle of Catholicism as State religion [entails that the decrees] must be considered abrogated" as well.¹¹⁷ "[T]he presence of the symbol of the cross induces in the student a deeply incorrect understanding of the cultural dimension of the expression of faith," he continued, "since it shows the unequivocal will of the State. . . to put the Catholic religion at the 'center of the universe' as an absolute truth."¹¹⁸

A few days later, a different integration of the same tribunal suspended and later voided the injunction on procedural grounds. However, in the meantime, the political reaction was thunderous enough to be reported by the *New York Times*: "Italians responded to the ruling with a fury that dominated news coverage around the country for several days."¹¹⁹ The fury was not only verbal. Security measures had to be taken¹²⁰ and reinforced¹²¹ to protect Montanaro's bodily integrity. Ofena's city mayor closed the school for some days to protect the children's tranquility.¹²²

The Deputy Prime Minister set the government's position: "A decision from a judge in search for fame offends the feelings of the vast majority of Italians."¹²³ The conservative majority at the Culture, Science and Education Committee at the Lower House passed a resolution acknowledging that Mussolini's decrees were still in force and requested the government to "put forward a sensibilization work that would make everyone understand why the crucifix represents a symbol of the values that are at the base of our national, European and Western identity."¹²⁴ Further to the political right, the

116. Trib. di L'Aquila, *Ordinanza 23 Ottobre 2003* [*Ordinance of Oct. 23, 2003*], OLIR (Jan. 15, 2004), <https://www.olir.it/documenti/ordinanza-23-ottobre-2003/>.

117. *Id.* § 5.

118. *Id.*

119. Frank Bruni, *Ofena Journal; On Display in Italy: Classroom Crosses, and a Raw Nerve*, N.Y. TIMES, Oct. 30, 2003.

120. *Crocifisso a scuola: Giudice sotto sorveglianza* [*Crucifix in Schools: The Judge Is Under Custody*], AGENZIA GIORNALISTICA ITALIA, Oct. 28, 2003.

121. *Crocifisso: Centinaia di e-mail a Tribunale L'Aquila* [*Crucifix: Hundreds of Emails to L'Aquila Court*], AGENZIA GIORNALISTICA ITALIA, Oct. 20, 2003.

122. *Crocifisso: Sindaco Ofena dispone chiusura scuola fino al 4/11* [*Crucifix: Ofena Mayor Orders School Closing Until November 4*], AGENZIA GIORNALISTICA ITALIA, Oct. 30, 2003.

123. Gianna Fregonara, *Crocifisso vietato, i Poli uniti contro la sentenza* [*Prohibition of the Crucifix: The Poles Unite Against the Decision*], CORRIERE DELLA SERA, Oct. 27, 2003 (quoting Gianfranco Fini).

124. *Risoluzione 06 novembre 2003, n.8-00061* [*Resolution of Nov. 6, 2003, n.8-00061*], OLIR (Nov.

decision was deemed “offen[sive],”¹²⁵ “absurd,”¹²⁶ “an abominable delirium,”¹²⁷ and “abhorrent.”¹²⁸

Left of center, the definitions were less extreme but equally condemnatory. The mayor of Rome said that the ruling was a “mistaken demand” which “not by chance was triggered by the most fundamentalist components of Islam.”¹²⁹ A Member of Parliament was more precise, defining the decision as “deprived of intelligence, commonsense, and legitimacy.”¹³⁰ The Italian president, a well-respected member of the resistance against fascism with a *laico* background, recalled that the decision was not final. Quoting Benedetto Croce, he reminded Italians that the crucifix was a symbol of the values that ground their identity.¹³¹

As Natalia Ginzburg did in the 1980s, Umberto Eco played the part of the indisputably *laico* intellectual who jumped into public debate defending the “secular and universal value”¹³² of the cross. In a widely read newspaper,

6, 2003), <https://www.olir.it/documenti/risoluzione-06-novembre-2003-n-8-00061/> (resolution presented by Ferdinando Adornato and approved).

125. Pisanu: “*Offeso come cristiano e cittadino*” [*Pisanu: “Offended as a Christian and as a Citizen”*], CORRIERE DELLA SERA, Oct. 26, 2003 (quoting Minister of Interior Giuseppe Pisanu: “I respect the decision, but I feel offended as a Christian and as a citizen. The crucifix is not only the symbol of my religion, but also the highest expression of two thousand years of civilization that belong entirely to the Italian people.”).

126. Monica Guerzoni, *Ispesione, Anm contro Castelli “Interferenza inammissibile” Fini - assurdo toglierlo dalle aule* [*Inspection: National Association of Magistrates Against Castelli: “It is an Unacceptable Interference.” Fini: It is Absurd to Take it out from Classrooms*], CORRIERE DELLA SERA, Oct. 30, 2003 (quoting the Vice President of the House of Deputies, Clemente Mastella, who said that it was an “absurd decision.”).

127. Gianna Fregonara, *La polemica sul crocifisso* [*The Polemic over the Crucifix*], CORRIERE DELLA SERA, Oct. 27, 2003 (quoting Minister of Communications Maurizio Gasparri).

128. *Crocifisso, interviene Castelli “Affiderò il caso agli ispettori”* [*Crucifix: Castelli Intervenes: “I’ll Submit the Case to Inspectors”*], LA REPUBBLICA, Oct. 26, 2003 (quoting Roberto Maroni, Minister of Welfare and member of the North League: “This is an abhorrent sentence that has to be voided as soon as possible, because it cannot be accepted that a judge erases millennia of history.”) [hereinafter *Crocifisso, interviene Castelli*].

129. Fregonara, *supra* note 127 (quoting Walter Veltroni, then mayor of Rome and former member of the Communist Party).

130. *Crocifisso, interviene Castelli, supra* note 128 (quoting Deputy Pierluigi Castagnetti).

131. Ciampi: “*Il crocifisso simbolo dei nostri valori*” [*Ciampi: “The Crucifix, Symbol of our Culture”*], LA REPUBBLICA, Oct. 28, 2003 (statement of President Carlo Azeglio Ciampi). The quote of Benedetto Croce deserves some explanation. Croce was one of the most important Italian intellectuals of the early 20th century and a key figure in the resistance of fascism. He was widely acknowledged as a *laico* liberal intellectual and an advocate of State-Church separation, to the point that his books were included in the Vatican’s *Index* of banned books. However, in 1942 he wrote a well-known essay in which, while not repudiating his agnosticism, he pondered the contributions of Christianity to Western culture. Benedetto Croce, *Perché non possiamo non dirci ‘Cristiani’* [*Why We Cannot Not Call Ourselves Christian*], in *DISCORSI DI VARIA FILOSOFIA I* (Laterza ed., 1945). As an unintended consequence, this essay and its title are cited in every iteration of the crucifix conflict.

132. Umberto Eco, *Essere laici in un mondo multiculturale* [*Being Secular in a Multicultural World*],

he pondered the value of the crucifix in Italian tradition and warned that European integration and multiculturalism could only be achieved through tolerance.¹³³

When a *provocateur*¹³⁴ called for the disappearance of the crucifix, he could be insulted, and even punched,¹³⁵ on camera for offending the Italian people. When the one doing so was an Italian judge, “in the name of the Italian people,”¹³⁶ something needed to be said to make sense of the apparent contradiction. The spontaneous rhetorical exit was predictable: a judge ordering the removal of the crucifix was not a real judge, the decision in which he ordered it was no judicial decision, and the law he was applying was not law.

Let us explore the rhetoric behind the judge’s defenestration. Mario Montanaro was not a real judge. He was only 33 years old,¹³⁷ and he had just moved to L’Aquila. He was a “stranger;”¹³⁸ he had not had enough time to immerse himself in the local culture upon which he was called to exert justice.¹³⁹ He was a young “officer of the judiciary”¹⁴⁰ who was “evidently in search of notoriety.”¹⁴¹ His motivation was to “make everyone talk” about

LA REPUBBLICA, Oct. 29, 2003.

133. *Id.*

134. Fabrizio Caccia, *Il quadro di Allah tolto dalla scuola dopo un giorno* [Allah’s Frame Removed After a Day], CORRIERE DELLA SERA, Sept. 17, 2003 (highlighting that the city mayor called Smith a “provocator who every year would come up with something to make people talk about himself.”).

135. Some months before the L’Aquila injunction, during a television debate, political scientist Carlo Pelanda felt Adel Smith had “violated with his words every limit of civility,” so he crossed the room and attempted to punch him. Carlo Pelanda, *Perché non mi pento della rissa in diretta con l’integralista islamico Adel Smith* [Why I Don’t Regret the Live Fight with Islamic Integrist Adel Smith], IL GIORNALE, Jan. 7, 2003. A few days later, members of the far-right organization Forza Nuova broke into another TV set to physically attack Mr. Smith. *Adel Smith aggredito in diretta televisiva* [Adel Smith Attacked on Live TV], LA REPUBBLICA, Jan. 10, 2003.

136. The first article in the Italian Constitution devoted to the judiciary states that “[j]ustice is administered in the name of the people.” Art. 101 Costituzione [Cost.] and the Code of Civil Procedure insist that judicial decisions are “pronounced in the name of the Italian people[.]” Art. 132 Codice civile. The concept is popular enough to have merited a famous movie. See IN NOME DEL POPOLO ITALIANO [IN THE NAME OF THE ITALIAN PEOPLE] (International Apollo Films 1971).

137. Virginia Piccolillo, *Non sono un giudice d’assalto, ho fatto una scelta di diritto* [I’m Not a Judge by Force, I Chose the Law], CORRIERE DELLA SERA, Oct. 27, 2003.

138. Francobaldo Chiocci, *Il giudice abruzzese. Appena indossata la toga tentò la scalata alla corrente di sinistra* [The Judge from Abruzzo. As Soon as He Put His Robe On, He Tried to Climb the Left Ladder], IL GIORNALE, Oct. 27, 2003.

139. *Id.*

140. Fabrizio De Feo, *Bondi attacca il giudice: “Costituzione calpestata, intervenga il Parlamento”* [Bondi Attacks the Judge: “The Constitution was Trampled Upon, Parliament Should Intervene”], IL GIORNALE, Oct. 27, 2003 (quoting Sandro Bondi, spokesman for the Prime Minister’s party, in Fabrizio De Feo).

141. Fregonara, *supra* note 127 (quoting Vice Prime Minister Gianfranco Fini).

him,¹⁴² called by a “longing for omnipotence.”¹⁴³ He was, no doubt, “ideologically motivated,”¹⁴⁴ possibly as a mason.¹⁴⁵ He only had to be honest and disclose his “membership card for some political party or some other anti-Christian association.”¹⁴⁶ Or maybe not. Perhaps he was just unfit for judicial office. A senator called for an “urgent reform of the judiciary” that included “aptitude tests.”¹⁴⁷ Regardless of whether he was inept or mischievous, he deserved punishment. Immediately after Montanaro’s decision was known, the Minister of Justice announced he would call for an investigation to see whether the decision was taken within the scope of existing legislation, since otherwise the judge could face “disciplinary sanctions.”¹⁴⁸

Of course, this rhetoric against Montanaro was only possible because the law he was applying was not law. At best, it was “an indication of negligence in the distortion of the law.”¹⁴⁹ Montanaro had made, “technically, a legal mistake” by not submitting the case to the Constitutional Court, an expert explained and many agreed (although facts would later show it was by no means clear he had).¹⁵⁰ The spokesman for the Prime Minister’s

142. *Riboldi: Cristo sulla Croce può fare solo bene a tutti* [*Riboldi: Christ on the Cross Can Only Do Good to Everyone*], LA STAMPA, Oct. 27, 2003 (quoting Monsignor Antonio Riboldi).

143. *Crocifisso, il ministro Castelli invia gli ispettori* [*Crucifix: Minister Castelli Sends Out the Inspectors*], IL TIRRENO DI LIVORNO, Oct. 27, 2003 (quoting Alfredo Mantovano, Undersecretary of Interior).

144. Paolo Guzzanti, *Il simbolo dell'Occidente* [*The Symbol of the West*], IL GIORNALE, Oct. 27, 2003.

145. One of the founders of the North League linked Montanaro’s injunction with the “secularization [fostered by] the Europe of masons: Communist and anti-Christian.” See Giovanni Cerruti, *Bossi – “E’ colpa della Chiesa che ha lasciato la tradizione”* [*Bossi: “It’s the Church’s Fault for Having Abandoned the Traditions”*], LA STAMPA, Oct. 27, 2003.

146. *Crocifisso: Lega Federale e Lega Nord accanto abitanti Ofena* [*Crucifix: Federal League and North League Next to Ofena’s Inhabitants*], AGENZIA NAZIONALE STAMPA ASSOCIATA, Oct. 28, 2003 (quoting North League MEP Mario Borghezio and former MP Giacomo Chiappori).

147. *Crocifisso: Palombo: Test attitudinali anche per magistrati* [*Crucifix: Attitudinal Tests Also for Judges*], AGENZIA GIORNALISTICA ITALIA, Oct. 29, 2003 (quoting Senator Mario Palombo).

148. Francesca Angeli, *Crocifissi a scuola, il governo invia gli ispettori* [*Crucifixes at school: Government Sends Out the Inspectors*], IL GIORNALE, Oct. 27, 2003 (quoting Roberto Castelli, the Minister of Justice, recalling that judges who “issue decisions outside the law are susceptible [to] disciplinary sanctions” and ordered an investigation on the procedure).

149. *Crocifisso: Mantovano, ansia onnipotenza dei giudici* [*Crucifix: Mantovano, Judges’ Longing for Omnipotence*], AGENZIA NAZIONALE STAMPA ASSOCIATA, Oct. 26, 2003 (quoting Undersecretary of Interior Alfredo Mantovano).

150. *Barbera: Le toghe non possono decidere su una materia simile* [*Barbera: Judges Cannot Decide upon an Issue like This*], CORRIERE DELLA SERA, Oct. 26, 2003 [hereinafter *Barbera*] (interviewing Augusto Barbera, a constitutional scholar and former MP for the center-left who would later become a Justice at the Constitutional Court). According to Professor Barbera, Judge Montanaro made a “technical mistake” when he did not refer the question to the Constitutional Court before deciding. However, since the crucifix exhibition was ordered by presidential decree, rather than a law from Parliament, scholars

party complained about “judges who, instead of applying the law, act as promoters of illegality.”¹⁵¹ The problem was deeper: Montanaro had committed a categorical mistake. The law has no say in defining Italian identity: judges should stay outside this sacred realm.¹⁵² The words that were attached to his actions transmit the feelings of monstrosity this transgression engendered: “absurd,” “abhorrent,” “abominable.”

Judge Montanaro himself could not avoid thinking of the proverbial elephant:¹⁵³ “I’m not using my judgeship as a weapon; I applied the law!”¹⁵⁴ Too late. A piece of writing containing no law and written by no judge was no judicial decision. Unlike judicial decisions, Montanaro’s “thirty-page essay”¹⁵⁵ commanded no legal authority. Socialist MP Bobo Craxi remarked, “[i]t has been said many times that decisions coming from judges should not be commented upon, but it is not the case of [Montanaro’s decision,] which offended the religious sentiment of the majority of Italians.”¹⁵⁶ If this position came from the center-left opposition, the conservative government

disagreed on whether the issue should have been referred to the Constitutional Court. *See generally* LA LAICITÀ CROCIFFISA?: IL NODO COSTITUZIONALE DEI SIMBOLI RELIGIOSI IN LUOGHI PUBBLICI [LAICITÀ: CRUCIFIED?: THE CONSTITUTIONAL QUESTION OF RELIGIOUS SYMBOLS IN PUBLIC PLACES] (Roberto Bin et al., eds., 2004) (exploring different expert opinions). Three years later, the Constitutional Court refused to hear an analogous case, retrospectively validating Montanaro’s decision not to refer the issue to the Constitutional Court. *Infra* note 180 and accompanying text.

151. De Feo, *supra* note 140 (quoting Sandro Bondi, spokesman of the PM’s party).

152. Monsignor Rino Fisichella framed his critique by saying that “it is not within the powers of a judge to intervene on these matters.” *Crocifisso a scuola: Mons. Fisichella: “La Chiesa reagira”* [Crucifix in Schools: Monsignor Fisichella: The Church Will React], AGENZIA NAZIONALE STAMPA ASSOCIATA, Oct. 26, 2003. Ottaviano Del Turco, leader of Democratic Socialists in the Senate, complained that “a judge [was] deciding to operate a too simplistic mediation in the relationship between the Christian West and the respect for the just as noble values such as those represented by the Islamic tradition. It is a matter about which Parliament’s responsibility is sovereign and not subrogable.” *Crocifisso: Del Turco: giustizialismo ha lasciato il segno* [Crucifix: Del Turco: Giustizialismo Left its Mark], AGENZIA GIORNALISTICA ITALIA, Oct. 28, 2003; Barbera, *supra* note 150 (quoting Augusto Barbera: “I don’t think a matter this delicate can be solved by decisions cut with an axe.”).

153. GEORGE LAKOFF, DON’T THINK OF AN ELEPHANT: KNOW YOUR VALUES AND FRAME THE DEBATE 3 (2004) (“Don’t think of an elephant! Whatever you do, do not think of an elephant. I’ve never found a student who is able to do this.”).

154. Piccolillo, *supra* note 137.

155. *Crocifisso: Laici CDL, CSM, atto abnorme, valuteremo iniziative* [Crucifix: Laici Liberal Christians in Judiciary Council: Act Outside of the Law, We Will Evaluate Sanctions], AGENZIA NAZIONALE STAMPA ASSOCIATA, Oct. 26, 2003 (quoting Nicola Buccico, member of the Judiciary Council).

156. *Crocifisso: Craxi, provocazioni non aiutano integrazione* [Crucifix: Craxi, Provocations Don’t Help Integration], AGENZIA GIORNALISTICA ITALIA, Oct. 28, 2003 (quoting Bobo Craxi, Socialist MP and son of former PM Bettino Craxi). A similar remark came from Vice President of the House of Deputies, Clemente Mastella: “We have respect for judicial decisions, but vanguardist judges who are only looking for fame and vanity are bad judges and bad teachers.” *Il caso Smith ricompatta i Poli e imbarazza anche il Csm* [Smith Affair Unites Poles and Puts Judiciary Council on the Spot], IL GIORNALE, Oct. 27, 2003.

extended its consequences even further: “citizens could feel free from the obligation of respecting the decisions of these magistrates who are, indeed, against the law and the judicial system.”¹⁵⁷

They felt free, indeed. City mayors and province governors all across Italy distributed crucifixes to schools and residents.¹⁵⁸ Yet another mayor, more spectacularly, nailed a seven-foot, 14th-century wooden crucifix at the entrance of the city hall.¹⁵⁹ The semi-official Vatican newspaper, *L'Osservatore Romano*, announced on its front-page headline that “we are not getting the cross removed.”¹⁶⁰ Maybe all this encouraged Ofena’s city mayor, who called a citizen’s assembly and, despite announcing that she would ultimately do as the assembly decided, anticipated that “we will never allow for the crucifix to be removed from our classrooms.”¹⁶¹ A few days later, in a public session attended by city mayors of nearby towns, Ofena’s city council decided not to remove the crucifix.¹⁶² By then, the mayor had already inaugurated a ten-foot crucifix right in front of Smith’s children’s school, “as a souvenir for the intolerance of someone who thought he could remove the crucifix from our school walls, but did not succeed.”¹⁶³

Reading these reactions as merely representative of a trend of attacks on the judiciary in post-Mani Pulite Italy would miss the core of the matter. Unlike the attacks on *giustizialismo*, a derogatory term coined by the political right to denounce undue judicial interventionism in politics, repudiation of Montanaro came from nearly all political forces as well as from the legal *intelligentsia*.¹⁶⁴ However, the attacks left a door open for the Constitutional

157. De Feo, *supra* note 140 (statement of Sandro Bondi, spokesman of the PM’s party).

158. For example, the governor of Palermo bought 500 crucifixes. See *Crocifisso: Provincia Palermo ne compra 500 per le scuole* [Crucifix: Palermo Province Buys 500 for Schools], AGENZIA GIORNALISTICA ITALIA, Oct. 31, 2003. Similar events happened in the city of Pianella. See *Crocifisso: Sindaco paese abruzzo ne regala uno a famiglia* [Crucifix: Mayor of Abruzzo Town Gives One per Family], AGENZIA GIORNALISTICA ITALIA, Oct. 28, 2003; *Crocifisso: Sindaco Reggio Calabria: Esponetelo in tutte le scuole* [Crucifix: Mayor of Reggio Calabria: Expose It in All Schools], AGENZIA GIORNALISTICA ITALIA, Oct. 29, 2003; *Il sindaco di Lesmo: ‘Una copia in dono a tutte le famiglie’* [Lesmo Mayor: ‘One Copy for Each Family as a Gift’], CORRIERE DELLA SERA, Oct. 29, 2003.

159. *Crocifisso: Sindaco Lega: all’anagrafe uno ligneo del 1400* [Crucifix: North League Mayor: In City Hall, a Wooden Cross from the 1400s], AGENZIA GIORNALISTICA ITALIA, Oct. 28, 2003.

160. *La Croce non ce la faremo togliere* [We Are Not Getting the Cross Removed], OSSERVATORE ROMANO, Oct. 28, 2003.

161. Ginni Pennacchi, *Ma l’ufficiale giudiziario fa obiezione di coscienza* [But the Judiciary Employee Exerts Conscience Objection], IL GIORNALE, Oct. 30, 2003.

162. *Crocifisso: Consiglio comunale Ofena dice no a rimozione* [Crucifix: Ofena Town Council Says No to Removal], AGENZIA GIORNALISTICA ITALIA, Nov. 3, 2003.

163. *Ofena, ora in piazza si erge un crocifisso alto tre metri* [Ofena, Now in the Public Square Stands a Three-Meter-Tall Crucifix], LA REPUBBLICA, Nov. 1, 2003.

164. See, e.g., Barbera: *Le toghe non possono*, *supra* note 150 (statements of Professor Barbera); see also *supra* text accompanying notes 123–157 (critiques coming from all political parties).

Court in case it wanted to issue a decision about the matter in the future.¹⁶⁵

And indeed, although the decision that suspended and later vacated the original judgment on procedural grounds received little public attention, it was celebrated in a way that showed a renewed faith in the judiciary. “This is an act of reparation; justice is restored . . . Judge Montanaro has been proved wrong and, at this point, he would do well in saying: forgive me, I have made a mistake.”¹⁶⁶ The original injunction had been a deviation, so, although “there were no doubts” the order would be reversed, the news was equally received with “satisfaction.”¹⁶⁷ The sentiment was perhaps best stated some months later, when the Constitutional Court rejected Ms. Lautsi’s analogous request. After the Court’s decision, senator Pierluigi Castagnetti said that “[t]he reasons of constitutional legality always match the reasons of commonsense.”¹⁶⁸

The *Smith* affair left the Italian soul untouched. Opinion surveys taken before and after the deed did not show any significant shifts in public opinion,¹⁶⁹ and the whole affair was soon largely forgotten. Judge Montanaro never again made it to national news. Adel Smith attempted other acts of rebellion against the crucifix, but he never again reached the same level of notoriety.¹⁷⁰ Some minor events aside,¹⁷¹ calm came before the storm.

165. See, e.g., Barbera: *Le toghe non possono*, *supra* note 150 (statements of Professor Augusto Barbera); *Crocifisso: Laici CDL, CSM*, *supra* note 155 (statements of Nicola Buccico, member of the Judicial Council); *Vescovi italiani difendono crocifisso in aula* [*Italian Bishops Defend the Crucifix in the Classroom*], AGENZIA GIORNALISTICA ITALIA, Oct. 26, 2003 (statements of Monsignor Giuseppe Betori).

166. *Crocifisso: Pedrizzi. Montanaro dica ‘Ho sbagliato’* [*Crucifix. Pedrizzi: Montanaro Should Say ‘I Made a Mistake’*], AGENZIA GIORNALISTICA ITALIA, Oct. 31, 2003 (quoting Senator Riccardo Pedrizzi).

167. *Il crocifisso resta in aula, revocata l’ordinanza* [*The Crucifix Stays in School. The Injunction Is Overruled*], CORRIERE DELLA SERA, Nov. 30, 2003 (quoting Rocco Buttiglione, Minister of Communitarian Policies).

168. Mariolina Iossa, *Ricorso respinto, il crocifisso resta nelle aule* [*The Appeal Is Rejected, the Crucifix Will Stay at Schools*], CORRIERE DELLA SERA, Dec. 16, 2004 (quoting Pierluigi Castagnetti (then MP leader of center-left)).

169. Compare ITALO DE SANDRE, *Pratica, credenza e istituzionalizzazione delle religioni* [*Practice, Belief and Institutionalization of Religions*], in UN SINGOLARE PLURALISMO. INDAGINE SUL PLURALISMO MORALE E RELIGIOSO DEGLI ITALIANI [A SINGULAR PLURALISM: AN INVESTIGATION ON THE MORAL AND RELIGIOUS PLURALISM OF ITALIANS 145, 150 (Franco Guarely et al., eds., 2003) (finding that 82.5% of Italians supported the exposition of the crucifix in 2000), with EURISPES, RAPPORTO ITALIA 2006, 1129 (2006) (finding that 80.3% of Italians supported the exposition of the crucifix in 2006).

170. Two months after the judicial affair, Adel Smith threw the crucifix out of the window of the public hospital room in which his mother was recovering. He later faced criminal prosecution for this action, although the trial did not receive widespread media attention. *Denunciato all’Aquila. Smith getta un crocifisso dalla finestra* [*Reported in L’Aquila. Smith Throws a Crucifix Out of the Window*], LA STAMPA, Dec. 16, 2003.

171. The most important of these minor events was the request of Judge Luigi Tosti, later called the “anti-crucifix judge,” to hold hearings in rooms without the presence of the crucifix. He would undergo

V. THE LAUTSI SAGA

Smith was the farce that prefigured *Lautsi*'s tragedy. While Adel Smith was a lone wolf, Soile Lautsi acted on behalf of an activist organization that counted a few thousand members.¹⁷² While Montanaro was an unknown local judge, the European Court of Human Rights is the largest human rights court in the world. While many politicians and social leaders in Italy had protested Montanaro's injunction, resistance to the first *Lautsi* judgment included the governments of tens of European countries and organizations across the Northern Atlantic.¹⁷³

But, amplified as they were, events in the *Lautsi* litigation unfolded through the same stages of what looked like a predetermined fate: an individual asserting her right to a crucifix-free school wall that a court initially validated, a thunderous outcry across the country, and a "switch in time" that saved the faces of the institutions involved and affirmed the status quo as public attention to the issue faded out. Understanding the meaning Italians gave to these events, in contrast with those that happened six years earlier, will hopefully shed light on what is particular to international courts' interventions and what is not.

A. Domestic Litigation in Lautsi

The Union of Rationalist Atheists and Agnostics (UAAR, for its initials in Italian) is a group of some few hundred Italians who advocate the defense of the "supreme constitutional principle of State *laicità*" and "promote the social and cultural valorization of rational and non-religious conceptions of the world."¹⁷⁴ In 2000, they launched the "Let's Decrucify Italy" campaign.¹⁷⁵ The campaign poster was, tellingly, the silhouette of Italy nailed to a cross.¹⁷⁶

The UAAR decided to undertake a judicial strategy and chose a couple who lived in the conservative Veneto region to be the plaintiffs for a new

a series of criminal and disciplinary proceedings. See Orlando Sacchelli, *Cassazione: rimosso il giudice anticrucifisso* "Solo quel simbolo è ammesso in tribunale" [Supreme Court: The Anti-Crucifix Judge Was Removed. 'Only That Symbol Is Admitted in a Court'], IL GIORNALE, Mar. 14, 2011.

172. In 2015, it was reported to have around 4,000 members who paid a regular fee. See GIULIA EVOLVI, BLOGGING MY RELIGION: SECULAR, MUSLIM, AND CATHOLIC MEDIA SPACES IN EUROPE 104 (2019).

173. A list of countries and associations allowed into the case is cited in *Lautsi II*, § 8. See also a discussion *infra* Section V.c.

174. *Benvenuti all'UAAR*, UAAR, <https://www.uaar.it/uaar/>.

175. Giorgio Vilella, *Editoriale di lancio della campagna* [Editorial for the Launch of the Campaign], UAAR, <https://www.uaar.it/uaar/campagne/scrocifiggiamo/00.html>.

176. *Il poster della campagna* [Poster of the Campaign], UAAR, <https://www.uaar.it/uaar/campagne/scrocifiggiamo/13.html>.

lawsuit which they hoped would lead to a decision by the Constitutional Court invalidating the Mussolini-era decrees.¹⁷⁷ After an expectedly unsuccessful request to the school of her children, Soile Lautsi, a Finnish-born Italian citizen, asked the regional administrative court to remove the crucifixes in her children's school.¹⁷⁸ The court referred the question to the Constitutional Court. "Now," the UAAR hoped, "the Court will do justice."¹⁷⁹

It did not. In December 2004, the Constitutional Court refused to hear the case. According to its short opinion, the Court is only allowed to review the constitutionality of laws, and the norms that mandate the display of the crucifix are executive regulations.¹⁸⁰ This decision, many scholars agreed, was "not forced, but willed."¹⁸¹ Contrary to the expectations that had been created in the legal community¹⁸² and, to a lesser extent, in civil society,¹⁸³ the Court "decided not to decide [in order to] avoid the bottleneck of a challenging judgment on the merits."¹⁸⁴ The Court was indeed standing before a challenge. Opinion surveys at the time showed 82.15% of Italians

177. CLIFFORD BOB, *RIGHTS AS WEAPONS: INSTRUMENTS OF CONFLICT, TOOLS OF POWER* 102 (2019) ("According to UAAR leader Carcano, the group ultimately hoped to receive a positive decision from Italy's Constitutional Court.").

178. *Id.* (noting that the plaintiffs chose to bring litigation forward in the conservative region of Veneto because it had little chances of success at the school level and would therefore allow for an appeal to the Constitutional Court).

179. *Ricorso crocifisso Padova: deciderà la Consulta [Appeal About the Crucifix in Padova: The Constitutional Court to Decide]*, UAAR, <https://www.uaar.it/uaar/campagne/scrocifiggiamo/28.html>.

180. Corte costituzionale [Constitutional Court] 15 dicembre 2004, n. 389 (It.); see Ilenia Ruggiu, *The Crucifix and the Margin of Appreciation*, in *THE CONSTITUTIONAL RELEVANCE OF THE ECHR IN DOMESTIC AND EUROPEAN LAW. AN ITALIAN PERSPECTIVE* 151 (Giorgio Repetto ed., 2013) (explaining this aspect). This had the paradoxical effect of proving Judge Montanaro correct in his decision not to submit the question to the Constitutional Court in the first place. See *supra* note 150 and accompanying text.

181. Andrea Pugiotto, *Sul crocifisso la Corte costituzionale pronuncia un'ordinanza pilatesca [On the Crucifix, the Constitutional Court Issues a Pilate-like Decision]*, 3 *DIRITTO & GIUSTIZIA* (2005). As noted, the issue was contentious among legal scholars. In a representative piece published before the decision, a constitutional scholar concluded that the Regional Tribunal submitted the question to the Court because of political reasons, and that the Court would also make its decision following political reasons, see Giovanni di Cosimo, *Le Spalle Della Corte [The Court's Shoulders]*, in *LA LAICITÀ CROCIFFISSA?*, *supra* note 150.

182. Many of Italy's most renowned constitutional scholars held a "preventive seminar" in the city of Ferrara to anticipate the possible paths the Constitutional Court could take. The proceedings of this seminar were published in 2004 in the book *LA LAICITÀ CROCIFFISSA?*, *supra* note 150.

183. Newspapers followed the chain of events, although not in the front pages.

184. See Pugiotto, *supra* note 181; see also Stefano Ceccanti, *Crocifisso: dopo l'ordinanza 389/2004. I veri problemi nascono ora [Crucifix: After Decision 389/2004, the True Problems Start Now]*, *Forum Costituzionale*, http://www.forumcostituzionale.it/wordpress/wp-content/uploads/pre_2006/298.pdf (noting that many scholars agreed that the Court could have gotten rid of the procedural impediment to decide, opening for itself three "objectively explosive" routes on the merits).

(including 66.77% of people who never went to church) opposed the prohibition of the crucifix in the classroom.¹⁸⁵ At the same time, legal scholars agreed that it would have been impossible for the Court, in light of its previous case-law on *laicità*, to uphold the validity of Mussolini's decrees fully.¹⁸⁶ Newspapers reacted to the Constitutional Court judgment as though the case had been solved on the merits: headlines announced that “the crucifix will remain in the classrooms.”¹⁸⁷ Life could go back to normal.

It did, but the legal process continued. The lawsuit returned to the Veneto administrative tribunal, which, now forced to decide, also rejected it. The tribunal started by quoting Benedetto Croce (“we cannot but call ourselves Christian”) to state that the crucifix had a symbolic value regarding the Italian people's tradition and identity, which cannot be “deleted with an act of sovereign will or through a judicial decision.”¹⁸⁸ However, it also followed Natalia Ginzburg's argument: Christianity, along with Judaism, “ha[s] put tolerance towards the other and the defense of human dignity at the center of [the] faith,” and therefore “contain[s] the ideas of tolerance, equality and liberty which lie at the base for the modern *laico* State, and the Italian State in particular.”¹⁸⁹ Its conclusion was all but inevitable: “[I]n the current social reality, the crucifix can be considered not only as a symbol of a historical and cultural evolution, and thus of our people's identity, but also as a symbol of a value system of freedom, equality, human dignity, and religious tolerance and therefore also of State *laicità*, principles that inspire our Constitution.”¹⁹⁰

The State Council confirmed the lower court's decision and reaffirmed its reasoning: “[I]t is inadequate to think of the crucifix as . . . an element of furniture, nor as an object of worship; it should be thought instead as a symbol suitable to express the high foundations of the aforementioned civic values, which are the values that delineate *laicità* in the current organizations of the State.”¹⁹¹ The Council would not accept the request that the State and its organs “refrain from using educational instruments . . . that not only do

185. This survey was published in a book around the time of the *Smith* scandal, De Sandre, *supra* note 169, at 145, and gained media attention, see *I cattolici - verità importanti anche nelle altre fedi* [Catholics: There are Important Truths Also in Other Faiths], CORRIERE DELLA SERA, Oct. 10, 2003.

186. See, e.g., Stefano Ceccanti, *E se la Corte andasse in Baviera? [What if the Court Went to Bavaria?]*, in *LA LAICITÀ CROCIFFISSA?*, *supra* note 150, at 22 (deeming that both complete acceptance and complete rejection of Lautsi's claim would be “extreme”).

187. See, e.g., Marilina Iossa, *Ricorso respinto, il crocifisso resta nelle aule* [Appeal Rejected. The Crucifix Will Remain in the Classrooms], CORRIERE DELLA SERA, Dec. 16, 2004.

188. TAR Veneto, 22 marzo 2005, Giur. it. II, n.1110, sez. ter., § 8.1 (It.).

189. *Id.* § 11.1.

190. *Id.* § 11.8.

191. Consiglio di Stato in sede giurisdizionale [Council of State], sez. ses., 13 gennaio 2006, n. 556, § 3 (It.).

not infringe any [constitutional] principle[s] . . . but seek to affirm them.”¹⁹²

Now, the way was paved to the last resource: Strasbourg. This was not the UAAR’s first option, since it was pursuing a Constitutional Court judgment, but it tried to make lemonade from lemons: an ECtHR ruling, it started to hope, could change Church-State relations all across Europe.¹⁹³ Before Strasbourg, they claimed the violation of the plaintiffs’ children’s right to education in connection to their right to freedom of conscience and religion as protected by the European Convention on Human Rights.¹⁹⁴

B. The First ECtHR Lautsi Ruling

By the time it had to decide over Lautsi’s petition, the ECtHR was a well-established court in Italy, which had ratified the European Convention on Human Rights as early as 1955 and all but one of its Additional Protocols.¹⁹⁵ Italians submitted nearly twice as many petitions per capita to the ECtHR than the average of Member States to the Convention.¹⁹⁶ All major Italian law schools at the time offered courses on European human rights law.¹⁹⁷ In 2007, the Constitutional Court had decided that the Convention was hierarchically superior to ordinary laws passed by Parliament. Therefore, ordinary judges had a duty to interpret national law according to the Convention and, when not possible, refer the question to it.¹⁹⁸ The Legislature and the Prime Minister’s Office had mechanisms to observe and enforce ECtHR’s case law.¹⁹⁹ In fact, given the high number of adverse judgments, the Italian Parliament routinely intervened to correct legislative provisions that were found to violate the Convention in matters such as criminal procedure, the secrecy of correspondence, and protection of

192. *Id.*

193. *See* BOB, *supra* note 177, at 105.

194. Article 9.1 of the European Convention of Human Rights reads as follows: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance”. Eur. Conv. on H. Rts. art. 9.1. Article 2 of the First Protocol to the Convention reads as follows: “No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.” Eur. Conv. on H. Rts. art. 2

195. Mercedes Candela Soriano, *The Reception Process in Spain and Italy*, in A EUROPE OF RIGHTS. THE IMPACT OF THE ECHR ON NATIONAL LEGAL SYSTEMS 401–02 (Helen Keller & Alec Stone Sweet eds., 2008).

196. *Id.* at 690.

197. *Id.* at 443–44.

198. *Id.* at 406 (citing Corte costituzionale [Constitutional Court], 24 ottobre 2007, n. 348 (It.), and Corte costituzionale [Constitutional Court], 24 ottobre 2007, n. 349 (It.)).

199. *Id.* at 432–33.

private property.²⁰⁰

On November 3rd, 2009, the Second Section of the ECtHR issued its unanimous ruling, declaring that Italy violated Lautsi's children's right to freedom of education and conscience.²⁰¹ In eleven paragraphs, the Court stated that the state had "an obligation . . . to refrain from imposing beliefs, even indirectly, in places where persons are dependent on it or in places where they are particularly vulnerable,"²⁰² such as public schools, in which the State has a "duty to uphold confessional neutrality."²⁰³ Furthermore, the presence of the crucifix "may be emotionally disturbing for pupils of other religions or those who profess no religion," especially those who belong to religious minorities.²⁰⁴

Back in Italy, the decision hit the newspapers particularly hard. Nearly every newspaper placed the decision on the front page,²⁰⁵ some of them for several days,²⁰⁶ portraying the ECtHR decision as an "order" or a "prohibition." "Take the crucifixes out of schools!"²⁰⁷ Even the *Gazzetta dello Sport*, the most widely-sold national sports newspaper and third overall, featured a whole page explaining the decision to its readers.²⁰⁸ The main national newspaper, *Corriere della Sera*, featured a cartoon on the front page that showed a sad Jesus walking out of a school carrying his cross, complaining that "they voted for Barabbas again."²⁰⁹ This editorialization was hardly casual: even when newspapers made an effort to feature interviewees and columnists who favored the decision, the ratio of texts that considered the decision "unacceptable" or "questionable" *vis a vis* those finding it "correct" was 5 to 1.²¹⁰

This overwhelming mass media condemnation arguably fell short of

200. *Id.* at 426–28.

201. Lautsi I, *supra* note 1, § 58. The Second Section included the then Italian Judge of the ECtHR, Vladimiro Zagrebelsky.

202. *Id.* § 11.

203. *Id.* § 13.

204. *Id.*

205. Diego Contreras, *The Crucifix and the Court in Strasbourg: Press Reaction in Italy to a European Court Decision*, in LANGUAGE USE IN THE PUB. SPHERE: METHODOLOGICAL PERSPS. & EMPIRICAL APPLICATIONS 327, 332 (Inés Olza Moreno et al., eds., 2014) (showing that the only national exception was the left-leaning paper *L'Unità*).

206. This is particularly true for newspapers leaning right, such as *Liberio*, which devoted three pages of the issue of November 4 and between one and two full pages for some days after.

207. Contreras, *supra* note 205, at 336–40.

208. Giorgio dell'Arti, *La nuova sentenza Perché ora è vietato il crocefisso nelle classi?* [*New Decision: Why is the Crucifix Now Prohibited in Schools?*], *GAZZETTA DELLO SPORT*, Nov. 4, 2009, at 42.

209. Cover, *CORRIERE DELLA SERA*, Nov. 4, 2009.

210. CONTRERAS, *supra* note 205, at 335. The effort in balancing the views is shown by the fact that, when considering only interviews, this ratio was 2:1.

mirroring the almost unanimous rejection across the political spectrum. “They can die! The crucifix will remain in every classroom! They can die—they and all those international organizations that don’t count to anything!” an exasperated Minister of Defense screamed on prime-time national television to the cheering of the live audience.²¹¹ The reactions of other members of the center-right government appeared moderate only in comparison. The Minister of Interior described the decision as an “act of stupidity,”²¹² while the Minister of Foreign Affairs lamented that Strasbourg had “given a death blow to the Europe of values and rights . . . Christian identity is the root of Europe.”²¹³ Prime Minister Silvio Berlusconi waited a day before deeming the judgment “unacceptable . . . for a country that cannot but call itself Christian,”²¹⁴ and stated that the decision “[made] us question the commonsense of this Europe of ours.”²¹⁵ *Libero*, a right-wing tabloid that gave the most coverage to the decision, imprinted the words “*Ideological diktat*” on every page that covered the decision.²¹⁶

Center-right or far-right, the common theme was constant. European “bureaucrats”²¹⁷ or “technocrats”²¹⁸ were “pulling European institutions

211. *Rai Uno television broadcast, Ignazio La Russa—Possono morire, Il crocifisso rester in tutte le aule!!! [Ignazio La Russa: They Can Die. The Crucifix Will Remain in all the Classrooms!!!]*, YOUTUBE (Nov. 9, 2009), <https://www.youtube.com/watch?v=wwA4sR6kzGM> (cited in BOB, *supra* note 177, at 236 n. 39).

212. Enrico Paoli, *Il governo fa ricorso: “E un atto di stupidità”* [The Government Appeals: “It’s an Act of Stupidity”], *LIBERO*, Nov. 4, 2009.

213. *Crocifisso: Frattini, colpo mortale a Europa dei valori* [Crucifix: Frattini. Death Blow to the Europe of Values], AGENZIA GIORNALISTICA ITALIA, Nov. 3, 2009 (quoting Minister of Foreign Affairs, Franco Frattini). Similarly, the Minister for the Realization of the Government Program, Gianfranco Rotondi, said that the decision amounted to a “denaturing of the Christian identity of Europe.” *Crocifisso: Rotondi, sentenza snatura identità Europa* [Crucifix: Rotondi: The Judgment Denatures the Identity of Europe], AGENZIA GIORNALISTICA ITALIA, Nov. 3, 2009.

214. *Il PdL va all’attacco della Corte. Bossi: la sentenza e una stronzata* [PDL Attacks the Court. Bossi: the Decision is Bullshit], *LIBERO*, Nov. 5, 2009 [hereinafter *Il PdL va all’attacco della Corte*]. Just as Ciampi before him, Berlusconi was citing Benedetto Croce. See Ciampi: “*Il crocifisso simbolo dei nostri valori*”, *supra* note 131.

215. *Il PdL va all’attacco della Corte*, *supra* note 214.

216. *LIBERO*, Nov. 4, 2009; *LIBERO*, Nov. 5, 2009; *LIBERO*, Nov. 6, 2009.

217. *Crocifisso: Zaccariotto (LN), a Venezia non la applicheremo* [Crucifix. Zaccariotto (LN), In Venezia We Will Not Comply], AGENZIA NAZIONALE STAMPA ASSOCIATA, Nov. 3, 2009 (quoting Francesca Zaccariotto, North League Governor of Venezia Province, saying that the decision was “the n-th demonstration that Strasbourg bureaucrats will persist in pretending the repudiation of our origins, maybe in the name of a new homologated and ‘illuminated’ world in which God will be replaced by the bankers and financiers that rule Europe.”).

218. *Crocifisso: Corradi (Lega), tecnocrati Ue lontani da popolo* [Crucifix: Corradi (North League), EU Technocrats are away from the People], AGENZIA NAZIONALE STAMPA ASSOCIATA Nov. 3, 2009 (quoting Roberto Corradi, North League Member of the Emilia-Romagna Regional Council, stating that “technocrats’ Europe shows once again to be years-light away from the common sentiment of European peoples.”).

away from the European peoples,”²¹⁹ anticipating an “unavoidable political failure.”²²⁰ The European project had walked away from the Founding Fathers’ ideas²²¹ once European officers had become infected with “left-wing, Jacobin, Marxist ideology”²²² with the purpose of building a “new era for a European Superstate,”²²³ an “arid structure without a soul,”²²⁴ a “utopian monster,”²²⁵ a “dictatorship of the nothing,”²²⁶ a “void space: void of symbols, of thoughts, of traditions, of culture.”²²⁷ The most extreme denounced a “masonic project to demolish the [Catholic] Church,”²²⁸ that could be traced back even to the “left-wing culture arising from the French Revolution . . . a poison that made peoples that lost sight of their own identities.”²²⁹ The most poetic warned that “[a] Europe that renounces to its own soul is doomed to die.”²³⁰ The Undersecretary of the Interior drew the inevitable consequence: “It is civil to rebel to such a Europe, which, before

219. *Crocifisso: Bizzotto (LN), Macroscopica idiozia* [*Crucifix: Bizzotto (North League), Macroscopic Idiocy*], AGENZIA NAZIONALE STAMPA ASSOCIATA, Nov. 3, 2009 (quoting Mara Bizzotto, North League MEP).

220. *Crocifisso: Bondi, inevitabile fallimento politico Europa* [*Crucifix: Bondi, Inevitable Political Failure of Europe*], AGENZIA GIORNALISTICA ITALIA, Nov. 3, 2009 (quoting Sandro Bondi, National coordinator for the PM’s party).

221. *Id.*

222. *Crocifisso: Romano La Russa, sentenza inaccettabile* [*Crucifix: Romano La Russa, Unacceptable Decision*], AGENZIA GIORNALISTICA ITALIA, Nov. 3, 2009 (quoting Romano La Russa, Former MEP and member of the PM’s party).

223. *Crocifisso: Borghesio, si conculca diritto Italia a sue scelte* [*Crucifix: Borghesio, the Right of Italy to its Own Choices is Disrespected*], AGENZIA GIORNALISTICA ITALIA, Nov. 3, 2009 (quoting Mario Borghesio, North League MEP).

224. *Crocifisso: Pionati, li porteremo in tutte piazze d’Italia* [*Crucifix: Pionati, We Will Take it With Us in All Italian Public Squares*], AGENZIA NAZIONALE STAMPA ASSOCIATA, Nov. 5, 2009 (quoting Francesco Pionati, Secretary General of the center-right party Alleanza di Centro).

225. *Crocifisso: Bergamini (Pdl), No al totalitarismo dei diritti* [*Crucifix: Bergamini (Pdl), No to the Totalitarianism of Rights*], AGENZIA NAZIONALE STAMPA ASSOCIATA, Nov. 3, 2009 (quoting Deborah Bergamini, MP for the PM’s party).

226. *Crocifisso: Mauro (Pdl), sentenza degna di regime totalitario* [*Crucifix: Mauro (Pdl), a Decision Worthy of a Totalitarian Regime*], AGENZIA NAZIONALE STAMPA ASSOCIATA, Nov. 3, 2009 (quoting Mario Mauro, Leader of the PM’s party’s MEPs).

227. *Crocifisso: Schifani, simbolo radicato nelle coscienze italiani* [*Crucifix: Schifani, A Symbol Rooted in Italians’ Conscience*], AGENZIA GIORNALISTICA ITALIA, Nov. 3, 2009 (quoting Renato Schifani, President of the Italian Senate).

228. *Crocifisso: Leoni (LN), Sentenza è parte progetto massonico* [*Crucifix: Leoni (LN), The Decision is a Part of a Masonic Project*], AGENZIA NAZIONALE STAMPA ASSOCIATA, Nov. 3, 2009 (quoting Giuseppe Leoni, North League Senator).

229. *Crocifisso: Narduzzi (LN), Non rispettiamo la sentenza* [*Crucifix: Narduzzi (LN), We Don’t Respect the Decision*], AGENZIA NAZIONALE STAMPA ASSOCIATA, Nov. 3, 2009 (quoting Danilo Narduzzi, Leader of the North League in the Friuli Regional Council).

230. Interrogazione di Senatore Bricolo, 10 novembre 2009, n. 1-00196, *Legisl. ital. XVI n. 16-243^a* (It.) (Interpellation Request by Senator Bricolo and 22 others).

being unjust, is profoundly stupid.”²³¹

Left of center, the adverse reaction was less dramatic although equally condemnatory. The theme of Italian and European identity was just as present: “Interculturality is grounded in the coexistence of diverse identities, not of their erasure,” Democratic Party MEPs explained, “judgments that swap human rights violations [with] the exposition of symbols [that refer to] the common cultural and civic bases for our Italian and European traditions do not help.”²³²

For the center-left, traditionally more friendly to European institutions,²³³ *Lautsi I* simply could not be the law. “I hope the ruling is merely orientational,” a Democratic Party senator wished.²³⁴ For others, this provided an excuse to blame the government for the ruling, while saving the reputation of the Court: “Commonsense was defeated in a courtroom in which, had it been adequately defended, it could have prevailed.”²³⁵ The Democratic Party, indeed, put their bill where their mouth was: a group of 20 senators introduced an interpellation request urging the government to adopt an “accurate” legal defense, “refraining this time from improper and counterproductive political considerations.”²³⁶ In the senators’ opinion, in fact, “only such flawed presentation of Italian reasons by the Government seems to have motivated what appears to be undoubtedly a change in the traditional cautiousness in the matter of religious freedom from a supranational Court [that has been] traditionally and necessarily respectful for the States’ margins of appreciation.”²³⁷

231. *Crocifisso: Mantovano, no ad un'Europa stupida e ingiusta* [*Crucifix: Mantovano, "No to a Stupid and unjust Europe"*], AGENZIA GIORNALISTICA ITALIA, Nov. 3, 2009 (quoting Alfredo Mantovano).

232. *Crocifisso: Europarlamentari Pd, No a guerre su simboli* [*Crucifix. PD MEPs, No to a Symbol War*], AGENZIA GIORNALISTICA ITALIA, Nov. 3, 2009 (quoting Silvia Costa, Patrizia Toia, and Gianluca Susta, MEPs for the center-left Democratic Party).

233. Nicolò Conti & Vincenzo Memoli, *L'Europa secondo i partiti: vincolo, scelta o opportunità?*, [*Europe According to the Parties: Tie, Choice, or Opportunity?*], in GLI ITALIANI E L'EUROPA. OPINIONE PUBBLICA, ÉLITE POLITICHE E MEDIA [ITALIANS AND EUROPE. PUBLIC OPINION, POLITICAL ELITES AND MEDIA] 31–58, 48–53 (Paolo Bellucci & Nicolò Conti eds., 2012) (showing the relatively more pro-European position of center-left parties in Italy in the last decades).

234. Paoli, *supra* note 212 (quoting Paola Binetti, Senator and member of the center-left Democratic Party and sometimes associated with the Catholic Church).

235. *Crocifisso: Fioroni, posizione Italia andava sostenuta meglio* [*Crucifix: Fiorotti, Italy's Position Should Have Been Defended Better*], AGENZIA NAZIONALE STAMPA ASSOCIATA, Nov. 3, 2009 (quoting Beppe Fioroni, former Minister of Education for the Democratic Party).

236. Interrogazione di Senatore Ceccanti, 4 novembre 2009, n. 2-00128, *Legisl. ital. XVI n. 16-243^a* (It.) (Interpellation Request by Senator Ceccanti and 18 others).

237. *Id.* The main author of the interpellation request was Senator Stefano Ceccanti, also a constitutional law scholar who had extensively written about the crucifix issue and had already proposed several times to adopt the solution adopted by the German Constitutional Tribunal, consisting in reaching for consensus in each educative community and removing the crucifix only when consensus could not be

Media and politicians were consonant with popular opinion. Five days after the ECtHR decision, a representative survey showed 84% of Italians (including 68% of those who never attended Mass) favored the display of the crucifix in the classroom.²³⁸ And many of them did not limit themselves to expressing their opinion. Newspapers reported that schools were “disobeying”²³⁹ the ECtHR. City mayors and province governors across the country ordered crucifixes for the schools in their territories, with some even threatening with fines teachers who dared to take them out.²⁴⁰ A mayor even requested his colleague from Abano Terme to “revoke the residence of the Italian-Finnish family.”²⁴¹ Others even offered to hang crucifixes in nightclubs, “equally frequented by young people.”²⁴² The Minister for European Policies ultimately validated all these reactions: “The crucifix will not be touched, ever, from any place, *laico* or not, of our Italy.”²⁴³

The insistence on an atavistic “soul” of Italy and Europe, under the names of identity and tradition, was matched by a parallel denunciation of the incapability of European institutions to sense and interpret it. The “so-called European Court of Human Rights”²⁴⁴ lacked jurisdiction to interpret the Italian soul: “It is not a judicial decision the one to change a people’s soul.”²⁴⁵ Sometimes, the incapability of the Court was framed as a cognitive limitation: “I am convinced that this decision is a mistake, an act of insensibility, of incapability of understanding the issue upon which they

reached. See Ceccanti, *supra* note 186.

238. *Crocifisso nelle aule: 84% e favorevole* [*Crucifix in Classrooms: 84% in Favor*], CORRIERE DELLA SERA, Nov. 8, 2009.

239. *Via il crocifisso dalle aule: le scuole disobbediscono* [*The Crucifix Away From the Classrooms: Schools Disobey*], IL RESTO DEL CARLINO, Nov. 4, 2009.

240. See, e.g., *Crocifisso: Ordinanza sindaco Pd, multa a chi lo leva dalle aule* [*Crucifix: Decree from Democratic Party Mayor, Fine to Whom Removes It From the Classroom*], AGENZIA NAZIONALE STAMPA ASSOCIATA, Nov. 5, 2009; *Crocifisso: Sindaco padovano, sia sposto in edifici pubblici* [*Crucifix: Padova Mayor, It is to be Exhibited in Public Buildings*], AGENZIA NAZIONALE STAMPA ASSOCIATA, Nov. 4, 2009.

241. See *Crocifisso: Bitonci (Lega), controllerò presenza in scuole* [*Crucifix: Bitonci (North League), I Will Control Its Presence in Schools*], AGENZIA NAZIONALE STAMPA ASSOCIATA, Nov. 4, 2009 (citing North League mayor of Citadella (Padova province)).

242. *Valle D’Aosta: Le notizie del giorno. Ore 18.30* [*Aosta: News of the Day. 6:30 PM*], AGENZIA NAZIONALE STAMPA ASSOCIATA, Nov. 4, 2009 (quoting Liliana Breuvé, leader of a night club owners association in Val D’Aosta).

243. *Crocifisso: Ronchi, non si toccherà mai da nessun luogo* [*Crucifix: Ronchi, It is Not Going to be Touched From Any Place*], AGENZIA NAZIONALE STAMPA ASSOCIATA, Nov. 4, 2009 (quoting Andrea Ronchi).

244. *Crocifisso: Zaccariotto (LN), a Venezia non la applicheremo*, *supra* note 217 (quoting Francesca Zaccariotto, North League Governor of Venezia Province).

245. *Crocifisso: Bonaiuti, sentenza non cambia l’anima di un popolo* [*Crucifix: The Decision Doesn’t Change the Soul of a People*], AGENZIA GIORNALISTICA ITALIA, Nov. 3, 2009 (quoting Paolo Bonaiuti, Spokesman for the Government).

were deciding”²⁴⁶ Other times, the Court was accused of entering a sacred realm that was immune to legal intervention: “No judicial decision can put into question what is the common sentiment of the overwhelming majority of the Italian people.”²⁴⁷

The problem, it seemed, was a problem of sensibility. No matter how correct, pure law would not be able to grasp Italian deeper values if decided in an “aseptic way.”²⁴⁸ Such law can only be an “imposition,”²⁴⁹ an executioner of “commonsense,”²⁵⁰ which, in fact, should prevail over “the norm.”²⁵¹ The ECtHR was supposed to “guard common sense,”²⁵² of which the people are the primary depositaries: “The reactions . . . certify that in Italy we have not lost sight of common sense.”²⁵³

As the storm was dialing down, a last actor was yet to quietly intervene. Some days after the *Lautsi I* judgment, and with no references to it

246. *Crocifisso: Maroni, Sentenza Corte Strasburgo atto di stupidità* [*Crucifix: Maroni, Strasbourg Court Decision is an Act of Stupidity*], AGENZIA NAZIONALE STAMPA ASSOCIATA, Nov. 3, 2009 (quoting Roberto Maroni, Minister of Interior).

247. *Crucifix: Giro, è simbolo integrante della nostra cultura* [*Crucifix: Giro, It is an Integral Symbol of Our Culture*], AGENZIA GIORNALISTICA ITALIA, Nov. 3, 2009 (quoting Francesco Giro, Undersecretary for Cultural Goods and Activities). See also *Crocifisso: P. Lombardi, in Vaticano sutupore e rammarico* [*Crucifix: Father Lombardi, in the Vatican, Astonishment and Distress*], AGENZIA GIORNALISTICA ITALIA, Nov. 3, 2009 (noting that Federico Lombardi, the spokesman for the Vatican, issued a similar statement: “It is shocking that a European court intervenes heavily on a matter so deeply tied to the historic, cultural, spiritual identity of the Italian people.”).

248. *Crocifisso: Sindaco Pd del Modenese, pronto a imporlo* [*Crucifix: PD Mayor from Modena is Ready to Impose it*], AGENZIA NAZIONALE STAMPA ASSOCIATA, Nov. 3, 2009 (quoting Raimondo Soragni, Democratic Party Mayor of Finale Emilia: “A Supreme Court cannot decide over questions that do not belong to it. . . . I cannot accept that an entity external to the Italian tradition decides, in an aseptic way, which should be the cultural conduct of a State.”).

249. *Crocifisso: Borghesio, si conculca diritto Italia a sue scelte* [*Crucifix: Borghesio, Italy’s Right to Its Own Choices is Being Violated*], AGENZIA GIORNALISTICA ITALIA, Nov. 3, 2009 (quoting Mario Borghesio, Northern League Minister of the European Parliament: “They want to impose a ‘European law’ over the value choices of member States.”). See also *Crocifisso: Sindaco Pd del Modenese, pronto a imporlo, supra* note 248 (noting that Massimo Polledri, Northern League Member of the Parliament, made a similar statement: “As long as popular sovereignty exists, we cannot but reject this decision.”).

250. *Crocifisso: Bersani, antica tradizione non offende nessuno* [*Crucifix: Bersani, An Ancient Tradition Does Not Offend Anyone*], AGENZIA GIORNALISTICA ITALIA, Nov. 3, 2009 (quoting Pierluigi Bersani, leader of the opposition Democratic Party: “In this delicate field, common sense ends up being a victim of law.”).

251. *Crocifisso: Rusconi (PD), non è offensivo per nessuno* [*Crucifix: Rusconi (Democratic Party), It is Not Offensive to Anyone*], AGENZIA NAZIONALE STAMPA ASSOCIATA, Nov. 3, 2009 (quoting Antonio Rusconi, Democratic Party Senator: “Common sense [should prevail] over the norm.”).

252. *Crocifisso. Zaia, sentenza Corte Strasburgo è vergognosa* [*Crucifix: Zaia, Strasbourg Court Decision is Shameful*], AGENZIA NAZIONALE STAMPA ASSOCIATA, Nov. 3, 2009 (quoting Luca Zaia, Northern League Minister for Agricultural Policies: “Precisely those who should be custodians of common sense are the ones to unhinge our civilization.”).

253. *Crocifisso: Mantovano, Corte diritti uomo inutile e dannosa* [*Crucifix: Mantovano, Human Rights Court Useless and Harmful*], AGENZIA GIORNALISTICA ITALIA, Nov. 3, 2009 (quoting Alfredo Mantovano, Undersecretary of Interior).

whatsoever, the Constitutional Court backpedaled on its 2007 judgments that granted the European Convention on Human Rights a supra-statutory hierarchy. In an otherwise irrelevant case, the Court recalled that the case-law of the ECtHR was to be complied with, exception made of those “imperative motives of general interest that suggest interventions of the national legislator in those situations . . . that are at the base of legislative power itself . . . and that the Convention leaves to the [margin of appreciation] of contracting States.”²⁵⁴ A few days later, the Constitutional Court reasserted its own power to fit ECtHR’s interpretation of Convention rights into the broader Italian constitutional rights complex.²⁵⁵ As commentators quickly noted, these warnings could not be but a reaction to the *Lautsi* judgment.²⁵⁶ The Italian Constitutional Court, it seemed, was also ready to repudiate *Lautsi I* should the occasion arise.

C. The Second Judgement of the ECtHR

As the turmoil generated by *Lautsi I* was fading out, Italy asked the Grand Chamber of the ECtHR to revise the judgment. In its presentation, the government emphasized the argument of the margin of appreciation in how to understand the duty of State neutrality.²⁵⁷ “It is not by chance,” the government added, “that Parliaments of some countries parties to the Convention have expressed themselves” against *Lautsi I*.²⁵⁸ In fact, as Joseph Weiler, a renowned European law professor and “practicing Jew,”²⁵⁹ noted, no official decision concerning the crucifix in Italy would be neutral: both removing it and keeping it would express a substantive view on the religious phenomenon. However, it also noted the impossibility of delimiting in a precise way the meaning of religious symbols, especially those which, as in

254. Corte cost., 16 novembre 2009, n. 311 2009, § 9 (It.).

255. See Corte cost., 20 novembre 2009, n. 317 2009, §§ 7–9, 16–21 (It.).

256. See NICO KRISCH, *BEYOND CONSTITUTIONALISM: THE PLURALIST STRUCTURE OF POSTNATIONAL LAW* 310–11 (Oxford Univ. Press ed., 2010). See also Oreste Pollicino, *Margine di apprezzamento, art 10, c.1, Cost. e bilanciamento “bidirezionale”: evoluzione o svolta nei rapporti tra diritto interno e diritto convenzionale nelle due decisioni nn. 311 e 317 del 2009 della Corte costituzionale? [Margin of Appreciation, Constitution and Bidirectional Rebalancing: Evolution or Turn in the Relationship Between Domestic and Conventional Law in Decisions 311 and 317 of the Constitutional Court?]*, FORUM DI QUADERNI COSTITUZIONALI (Dec. 16, 2009), http://www.forumcostituzionale.it/wordpress/images/stories/pdf/documenti_forum/giurisprudenza/2009/0031_nota_311_317_2009_pollicino.pdf (noting in Italian constitutional law scholarship that this was quickly noted).

257. *Lautsi v. Italy*, App. No. 30814/06, Eur. Ct. H.R. § 17 (2009), Repubblica Italiana – Ministero degli Affari Esteri, *Saisine de la Grande Chambre*, https://presidenza.governo.it/CONTENZIOSO/comunicazione/allegati/LAUTSI_ricorso_italia.pdf (application to the ECtHR).

258. *Id.* § 6.

259. *Id.* § 14.

the case of the cross, are “constituted by a set of principles and values that are at the base of our democracies and of Western civilization,” and are “also. . . an identitarian symbol.”²⁶⁰

Italy was not alone. The reaction in Italy had been followed by intense mobilization all across Christian Europe, especially in the Orthodox East.²⁶¹ As some commentators put it, a “Holy Alliance” formed in reaction to *Lautsi I*, including some twenty European countries and conservative and religious think tanks, the most prominent of which was the European Center for Law and Justice, with connections to the American Center for Law and Justice.²⁶² Ten European countries joined Italy in their presentation to the Grand Chamber of the ECtHR, eight of which were represented by Professor Joseph Weiler in the ECtHR hearings. Weiler would rehearse an argument that he had anticipated in a 2003 book about the controversy around the inclusion of a reference to Europe’s Christian roots in the projected European Constitution (*A Christian Europe*, published originally in Italian) and repeated after *Lautsi I*: “In a society where one of the principal cleavages is not among the religious but between the religious and the secular, absence of religion is not a neutral option.”²⁶³

In the end, a 15-2 majority of the Grand Chamber of the ECtHR issued its final decision in March 2011, reversing *Lautsi I* and declaring that the exposition of the crucifix did not violate human rights. According to the majority, “the decision whether or not to perpetuate a tradition falls in principle within the margin of appreciation” of Italy.²⁶⁴ In particular, since even Italian high courts disagreed on the meaning of the crucifix, the ECtHR would refrain from “tak[ing] a position regarding a domestic debate among domestic courts.”²⁶⁵ Whatever its meaning, however, “a crucifix on a wall is an essentially passive symbol,” and therefore its “influence on pupils [cannot be deemed] comparable to that of didactic speech or participation in religious activities.”²⁶⁶

260. *Id.* § 15(D).

261. *Id.* § 3(F). Indeed, Italy invoked this public reaction as a reason for the Grand Chamber of the ECtHR to reconsider the case.

262. Pasquale Annicchino, *Winning the Battle by Losing the War: The Lautsi Case and the Holy Alliance between American Conservative Evangelicals, the Russian Orthodox Church and the Vatican to Reshape European Identity*, 6 RELIGION & HUM. RTS.: INT’L J. 213, 214–15 (2011).

263. Joseph H.H. Weiler, *Editorial, Lautsi: Crucifix in the Classroom Redux*, 21 EUR. J. INT’L L. 1, 4 (2010); see also *Crucifix in the Classroom—Joseph Weiler before the European Court of Human Rights*, YOUTUBE (Oct. 9, 2011), <https://www.youtube.com/watch?v=ioylyxM-gnM> (showing Professor Weiler’s argument before the Grand Chamber).

264. *Lautsi II*, *supra* note 12, ¶ 68.

265. *Id.*

266. *Id.* ¶ 72.

What is perhaps more notable is that members of the ECtHR itself joined the ritual repudiation that the first *Lautsi* judgment had already suffered in Italy. While the majority of the Grand Chamber limited themselves to dispassionately document that they “d[id] not agree” with the Chamber’s “approach,”²⁶⁷ and other judges even confessed hesitation in reaching such a difficult decision,²⁶⁸ other members of the Court felt the need to make their radical rejection of *Lautsi I* more vivid. A concurring vote found the Second Chamber’s reasoning “striking.”²⁶⁹ Another member of the Court, writing extrajudicially, would later state that *Lautsi I* “[came] as a surprise” in the light of the otherwise consistent jurisprudence in religious freedom.²⁷⁰ The most egregious example comes from Judge Bonello’s concurring opinion in the Grand Chamber: his colleagues, from “a glass box a thousand kilometers away,”²⁷¹ had “suffer[ed] from historical Alzheimer’s”²⁷² and committed a “major act of cultural vandalism,”²⁷³ “uninformed nonsense.”²⁷⁴

Back to Italy. Unlike the first judgment, *Lautsi II* received “surprisingly. . . little attention in the public arena.”²⁷⁵ The day immediately

267. *Id.* ¶ 73.

268. See generally *Lautsi II*, *supra* note 12, (Rozakis, J., concurring) (joined by Judge Vajic,) (“The question which therefore arises at this juncture is whether the display of the crucifix not only affects neutrality and impartiality, which it clearly does, but whether the extent of the transgression justifies a finding of a violation of the Convention in the circumstances of the present case. Here I conclude, not without some hesitation, that it does not . . . [.]”).

269. *Lautsi II*, *supra* note 12, at 44 (Power, J., concurring).

270. Angelika Nußberger, *The European Court of Human Rights and Freedom of Religion*, in RELIGION AND INTERNATIONAL LAW: LIVING TOGETHER 130, 131 (Robert Uerpmann-Witzack et al., eds., 2018). She was not the only member of the ECtHR who felt the need of detaching herself from the decision of her colleagues. The former Spanish judge to the ECtHR Javier Borrego wrote, in a harsh opinion piece, that *Lautsi I* was doomed to lose the trust of the public because it was a “professional lecture” rather than a “judicial decision,” and “professors turned into judges are, save notable exceptions, horrible judges.” Javier Borrego, *Estrasburgo y el crucifijo en las escuelas* [*Strasbourg and The Crucifix in Schools*], EL MUNDO, Dec. 17, 2009. Another ECtHR judge, without citing *Lautsi I* explicitly, recommended that the Court in the future avoid “inquiries into the content of a [religious] symbol” and admonished that “allegations of the ‘proselytising effect’ of symbols should be supported with evidence.” Paulo Pinto de Albuquerque & Andrea Scoseria Katz, *Is Religion a Threat to Human Rights? Or is it the Other Way Around?*, in RELIGION AND INTERNATIONAL LAW: LIVING TOGETHER 279, 292 (Robert Uerpmann-Witzack et al., eds., 2018). Judge Pinto de Albuquerque’s stance is particularly interesting, because he was a Judge who otherwise deplored the overuse of the margin of appreciation doctrine by the Court. See, e.g., *Correia de Matos v. Portugal*, App. No. 56402/12, Eur. Ct. H.R. ¶¶ 33–54 (Apr. 4, 2018), (Pinto de Albuquerque, J., dissenting), <https://hudoc.echr.coe.int/eng?i=001-182243>.

271. *Lautsi II*, *supra* note 12, ¶ 1.4 (Bonello, J., concurring).

272. *Id.* ¶ 1.1.

273. *Id.* ¶ 1.4.

274. *Id.* ¶ 1.5.

275. Luca Ozzano & Alberta Giorgi, *The Debate on the Crucifix in Public Spaces in Twenty-First Century Italy*, 18 MEDITERRANEAN POL. 259, 269 (2013).

after the decision, only about a third of relevant newspapers considered the reversal of *Lautsi I* worthy of the front page, and it received approximately a third of the coverage of the original decision. One day later, it practically disappeared from newspapers. Also, unlike *Lautsi I*, most of the coverage of the Grand Chamber decision was informative rather than interviews or editorials.²⁷⁶

The whole *Lautsi* litigation was referred to as a long “battle;”²⁷⁷ the decision was described in terms of a victory “of Europe”²⁷⁸ but also “over Europe.”²⁷⁹ “Commonsense,” at the end, prevailed,²⁸⁰ and government and opposition profusely expressed their “satisfaction.”²⁸¹ The Minister of Education celebrated an “important day for Europe and its institutions which finally, thanks to this judgment, got closer to the ideas and the deepest sensibility of its citizens.”²⁸² “This decision,” added the Minister of Foreign Affairs, “interprets especially the voice of citizens in defense of their values

276. For a quantitative study, see CONTRERAS, *supra* note 205, at 333 (reporting that in the media coverage of *Lautsi I*, the ratio between information and opinion was about 50:50, whereas in the coverage of *Lautsi II*, it was closer to 70:30, which is the usual proportion).

277. *Crocefisso: PE, Borghesio-Bizzotto (LN), giustizia è fatta* [*Crucifix: MEPs Borghesio-Bizzotto (North League), Justice Was Done*], AGENZIA NAZIONALE STAMPA ASSOCIATA, Mar. 18, 2011 (quoting Mario Borghesio & Mara Bizzotti, North League MEPs, who said “Justice was done, our arduous battle was rewarded.”). The Vice-President of the European Parliament, Democratic Party member Gianni Pittella, also talked about a “battle won for all, laici, Catholics, and religious minorities.” *Crocefisso: Pittella (Pd), una battaglia vinta per laici e cattolici* [*Crucifix: Pittella (Democratic Party), a Battle Won for Laici and Catholics*], AGENZIA GIORNALISTICA ITALIA, Mar. 19, 2011.

278. For example, the Minister of Foreign Affairs, Franco Frattini, issued a statement saying that “today the popular sentiment of Europe won.” Press Release, Franco Frattini, Minister of Foreign Affairs, Official Statement on *Lautsi* (Mar. 18, 2011), https://www.esteri.it/mae/it/sala_stampa/archivionotizie/comunicati/20110318_corteeuropea.html; see also MEP Luca Volontè, *Il ritorno della memoria* [*The Return of Memory*], IL RESTO DEL CARLINO, Mar. 19, 2011 (celebrating the “great victory of Europe”).

279. See, e.g., Marco Ventura, *La Tradizione come Diritto* [*Tradition as Law*], CORRIERE DELLA SERA, Mar. 19, 2011 (“Italy is, since today, the country that defended the Central and Eastern Europe of traditions against the Western Europe of pluralist neutrality.”).

280. See *Crocefisso: Polledri (Lega), sentenza di buon senso* [*Crucifix: Polledri (North League), Commonsense Decision*], AGENZIA NAZIONALE STAMPA ASSOCIATA, Mar. 18, 2011 (quoting North League MP Massimo Polledri for saying “it is a choice of commonsense that brings Europe back to its citizens”).

281. For example, the Vice President of the Senate Democratic Party, Vannino Chiti, see *Crocefisso: Chiti (Pd), grande soddisfazione per la sentenza UE* [*Crucifix: Chiti (Democratic Party), Greatly Satisfied with EU Decision*], AGENZIA GIORNALISTICA ITALIA, Mar. 18, 2011. See also Frattini, *supra* note 278.

282. *Crocefisso: Gelmini, simbolo irrinunciabile* [*Crucifix: Gelmini, an Irrenounceable Symbol*], AGENZIA GIORNALISTICA ITALIA, Mar. 18, 2011 (quoting Minister of Education Mariastella Gelmini). A similar remark by Minister of Foreign Affairs: “A waking-up of Europe, which was walking away from the true sentiment of common people.” Luca Mirone, *Crocefisso: Frattini, Europa si risveglia, Vaticano esulta* [*Crucifix: Frattini: Europe Is Waking Up, the Vatican Is Exhultant*], AGENZIA NAZIONALE STAMPA ASSOCIATA, Mar. 18, 2011.

and their identity.”²⁸³ The Minister of Justice and soon-to-be leader of the center-right coalition went further: the ECtHR “restitutes dignity to our solid and inalienable Christian roots.”²⁸⁴ A fellow minister would say that “an element of justice and truth” was reestablished.²⁸⁵

Europe was now “redeemed,”²⁸⁶ and the ECtHR recovered its legal aura: “Italy is absolved,” most newspapers announced from their headlines.²⁸⁷ The center-left vice-president of the Senate celebrated that, thanks to the Court, “justice is finally done over this topic,” despite the previous judgment that had deviated from the traditional jurisprudence because of a defective defense by the Italian government.²⁸⁸ The ECtHR, the head of conservative EU Parliamentarians wrote, “recover[ed] an unexpected credibility.”²⁸⁹

The official press release of the Vatican had the same undertones. The new judgment was “welcome[d],” because it “recognize[d], at a highly prestigious and international legal level that the culture of human rights must not be put in contradiction with the religious grounding of European civilization.” The judgment, therefore, “helps to effectively contribute to reestablishing trust in the European Court of Human Rights from a big portion of Europeans” who believe both in Europe and in their Christian values and history.²⁹⁰ Again, true law is opposed to pure form: “A victory of law . . . over ideological legalism.”²⁹¹

283. Frattini, *supra* note 278.

284. *Crocifisso: Alfano, dignità irrinunciabili radici cristiane [Crucifix: Alfano, Dignity, Irrenounceable Christian Roots]*, AGENZIA GIORNALISTICA ITALIA, Mar. 18, 2011.

285. *Crocifisso: Rotondi, ristabilito elemento di giustizia [Crucifix. Rotondi: An Element of Justice Is Reestablished]*, AGENZIA NAZIONALE STAMPA ASSOCIATA, Mar. 18, 2011.

286. Luigi Santambrogio, *L'Europa si redime e ci lascia il Crocifisso [Europe Redeems Itself and Leaves the Crucifix]*, LIBERO, Mar. 18, 2011.

287. See CONTRERAS, *supra* note 205, at 340 (noting that the first decision was mostly framed by newspapers as a directive, whereas the second decision was framed as a declarative act). The Italian verb “assolvere” has the dual meaning of “acquitting” and “absolving.” See a collection of newspaper headings here: <http://rstamp.pubblica.istruzione.it/rassegna/rassegna.asp?PagStart=1&Ordine=7&Abbonam=0&ricdat a=0&IniGior=19&IniMese=03&IniAnno=2011&FinGior=19&FinMese=03&FinAnno=2011&Titolo=&aVetIDsTest=&Articolo=&Rubrica=0&Rubsec=False&Argomen=0&Ricview=False&Fulltext=&B1=Ricerca>.

288. See *Crocifisso: Chiti (Pd), grande soddisfazione per la sentenza UE*, *supra* note 281 (Statement of Vannino Chiti).

289. Mario Mauro, *Si al crocifisso: l'Europa recupera le radici cristiane [Yes to the Crucifix: Europe Recovers Christian Roots]*, IL GIORNALE, Mar. 19, 2011.

290. Press Release, Father Frederico Lombardi (Former Director of the Holy See Press Office), Declaration by the Director of the Press Office of the Holy See, Fr. Federico Lombardi, On Today's Judgment of the Grand Chambre of the European Court Of Human Rights (Mar. 18, 2011), <https://press.vatican.va/content/salastampa/it/bollettino/pubblico/2011/03/18/0160/00391.html>.

291. Press Release, Salvatore Martinez (President of Catholic Association Rinnovamento dello

In a typical way for legal scholarship, most legal scholars discuss *Lautsi II* as an uncontextualized judicial decision that deserves being praised or criticized by its internal coherence and by its consistency with the larger body of European caselaw: this argument is misplaced, that reasoning is a potent innovation, and so on. Some scholars go beyond the form and treat *Lautsi II* as a defection or as a tactical retreat, describing a Court concerned about calculating the costs inflicted on its legitimacy capital.²⁹² However, this “switch in time” that saved the forty-seven²⁹³ was assessed differently by most Italians: *Lautsi II* showed the European Court of Human Rights that it could be sensitive to societal feelings and demonstrated that law and commonsense could align.

V. LAW AND IDENTITY IN LAUTSI

Why would people in the disenchanted 21st century care so much about a religious symbol on the walls of schools—a piece of furniture that, as sometimes was recalled, was not even present in most schools anyways?²⁹⁴ In fact, when asked, many would say that they did not care. “Many tell me that this issue is of no importance,” Natalia Ginzburg lamented in 1988, “problems are so many and so dramatic, at school and elsewhere, that this is a non-existing problem.”²⁹⁵ “With all the problems the European Union has, do they really have to talk about the crucifix?! Why don’t they solve the problem of the mafia?” a socialite exploded after the 2009 *Lautsi* decision in primetime TV, to the unanimous applause of the audience.²⁹⁶ “Rather than

Spirito Santo), Martinez on the Sentence of the Court of Strasbourg on the Crucifix in Schools (Mar. 18, 2011), <http://www.rns-italia.it/NuovoSito/page/standard/site.php?p=cm&o=vd&id=581>.

292. See McGoldrick, *supra* note 13, at 502 (“By resorting to the margin of appreciation the ECtHR avoided becoming an arbiter in highly divisive religious issues and avoided potential populist resentment.”); Effie Fokas, *Comparative Susceptibility and Differential Effects on the Two European Courts: A Study of Grasstops Mobilizations around Religion*, 5 OXF. J. L. REL. 541, 565 (2016) (“Certainly it can be argued, for example, that . . . this backlash [against Lautsi I] influenced not only the overturning of the unanimous (7-0) Chamber judgment by a 15-2 Grand Chamber judgment, but also, notably, the move from a judgment in which the margin of appreciation was mentioned three times . . . to one in which the margin was mentioned 27 times.”); Roni Mann & Conrado Hübner Mendes, *What Judges Don’t Say: Judicial Strategy and Constitutional Theory*, WZB REPORT 21, 21 (2015) (“[I]t would be naïve to think that the switch in the Lautsi case . . . was the outcome of substantive legal reasons alone, rather than also a response to the uproar over the lower chamber’s decision against this practice in Italy and the concerns it raised over the ECHR’s continuing authority.”); Dimitrios Tsarapatsanis, *Human Rights Beyond Ideal Morality: The ECtHR and Political Judgment*, 10 LAWS 77, 105 (2021) (“[Lautsi II] involved a change of position on the part of the Court, which could arguably be attributed, to an extent, to the political reactions that Lautsi I prompted.”).

293. For non-U.S. readers, this is a clumsy reference to “the switch in time that saved [the] nine” Justices of the pre-New Deal Court from President Franklin Roosevelt’s court-packing plans.

294. See *infra* text accompanying note 302.

295. CASTRONUOVO, *supra* note 86.

296. *L’arena: dibattito sui crocifisso – via il crocifisso da scuola – Il crocifisso nelle aule* [Debate

caring about what is hanging in schools' walls, [the Minister of Education] should take care about making them more solid!" former Prime Minister Matteo Renzi complained in 2019, in reference to the maintenance of school buildings.²⁹⁷

Except that they do care.²⁹⁸ These people, as well as many others, would rather not be dragged to question the presence of the crucifix. But once they are, the issue receives the attention so professedly denied. The crucifix may very well be the single most important irrelevant conflict in Italy.²⁹⁹ "The crucifix has always been there," we hear over and over. Its undisturbed presence belongs to the set of background expectations of most Italians, and we can only learn about its deepest meaning once its threatened removal forces people to reflect on it.³⁰⁰

What was this seemingly innocuous conflict about, so as to engender all these heated reactions continuously over more than three decades? It was not, trivially enough, about the crucifixes themselves.³⁰¹ In fact, in every iteration of the conflict, some observer would point to the fact that many, perhaps most, Italian public schools did not even display those supposedly mandatory crucifixes, in the vain hope of ending an irrational debate.³⁰² And,

on Crucifixes – Remove the Crucifix from School - The Crucifix in Classrooms], YOUTUBE (Nov. 8, 2009), <https://www.youtube.com/watch?v=IGT16g4ZwIk>.

297. *Infra* note 348 and accompanying text.

298. I hope a personal anecdote illustrates this point. When I was starting this project, a friend of mine, an Italian raised in a Communist, anti-clerical household and too young to remember the discussions surrounding the crucifix in the 2000s, was trying to convince me that people did not care about the issue. I was confused, and told him about the outrage provoked by Adel Smith in 2001, when he claimed that Catholics venerated a little corpse. Suddenly, he empathized with his connationals: "Well, of course they went mad! I'm not a Catholic, but the cross has been there for two thousand years!" Unknowingly, he was rehearsing the lines I would later encounter over and over in my interviews.

299. An anthropologist writing about culture diversity in Italy expresses his perplexity in this way: "On one hand, it looks vain to either attempt to reinforce the sense of belonging to a given religion by imposing its symbols to pupils as to secularize the school by abolishing them, on the other hand it seems excessive the importance that goes attributed to them." See MARCO AIMÉ, *ECESSI DI CULTURE [EXCESSES OF CULTURES]* 15 (2004).

300. Students of national identity have noted that "the attitudes and beliefs that constitute nationality are very often hidden away in the deeper recesses of the mind, brought to full consciousness only by some dramatic event." DAVID MILLER, *ON NATIONALITY* 18 (1995). Sociologist Jon Fox, a specialist in national identity, suggests precisely that the best way to study national identity is to "breach" the everyday expectations of nationhood, "turning unselfconscious suppositions about how our national world operates into explicit articulations and practices of repairing, and thereby constituting, the nation." Jon E. Fox, *The Edges of the Nation: A Research Agenda for Uncovering the Taken-for-granted Foundations of Everyday Nationhood*, 23 *NATIONS & NAT'Y* 26, 33 (2017). This strategy is inspired by Harold Garfinkel's "breaching experiments." See Garfinkel, *supra* note 62.

301. MURRAY EDELMAN, *THE SYMBOLIC USES OF POLITICS* 6 (1964) ("Every symbol stands for something other than itself.").

302. Some doctrinal articles point to this. Marta Cartabia, who would later become a fierce critic of Lautsi I, observed in 2004 that most public schools do not even have crucifixes. See Marta Cartabia, *in*

as many left and right observed, even if the ECtHR had confirmed the order to remove crucifixes from schools, no crucifix was going to be removed anyway.³⁰³

The conflict did not center around loyalty to the Catholic Church or the figure of Christ himself. This is very clear when we notice that, in every iteration of the conflict, defenders of the crucifixes did not recur to a religious authority but, rather, to intellectuals unaccusable of fascist or clerical affinities. Every iteration, in fact, had its own secular intellectual who solicitously came to the crucifix's defense. Rather than invoking the Italian Founding Fathers of Christian Democracy, defenders of the crucifix celebrated the support from *laico* presidents Carlo Ciampi³⁰⁴ or Giorgio Napolitano.³⁰⁵ Rather than invoking the wisdom of John Paul II or Benedict XVI,³⁰⁶ defenders of the crucifix cited *ad nauseam* intellectuals unaccusable

LA LAICITÀ CROCFISSA *supra* note 150, at 68. Some journalists also tried to call attention to this fact. See *L'Arena*, *supra* note 296 (featuring journalist Filippo Facci ironizing that “we are pretending to ignore that crucifixes are no longer hanging when they build new schools.”); Ilaria Venturi, *Crocifissi in classe? Mancano da vent'anni [Crucifixes in Class? Missing for 20 Years]*, LA REPUBBLICA, Nov. 5, 2009. In March 2019, half of students in public schools did not have a crucifix in their classroom. See Lorena Loiacono, *Scuola, un'aula su due è senza il crocifisso: Ma solo uno studente su 5 lo vorrebbe [School, One Out of Every Two Classrooms is Without a Crucifix: But Only One in Five Students Would Want One]*, LEGGO, Mar. 4, 2019.

303. See, e.g., LUZZATTO, *supra* note 88, at 5 (“Whatever the result of the [*Lautsi*] litigation, I know—we all know—that Strasbourg judges will not be enough to unvail a single crucifix from Italian public buildings.”).

304. See *supra* notes 131–135.

305. Giorgio Napolitano was a former member of the Communist Party and, according to the UAAR, a closeted atheist who nevertheless likes to please the Catholic Church. See EVOLVI, *supra* note 172, at 107–08. In a public letter to be read in a seminar about the *Lautsi* litigation in 2010, he stated that he “d[id] not intend to interfere in any way with the judicial organs’ powers. . . in whose wisdom it is better to trust and whose final decision must be respected.” However, he also made a vote for subsidiarity, noting that member States “are in a better position to perceive [religious symbols’] valence in relation to the sentiments prevalent in their populations.” See Giorgio Napolitano, Lettera del Presidente Napolitano a Claudio Zucchelli, Presidente di “Umanesimo Cristiano” [Letter of Giorgio Napolitano to Claudio Zucchelli (President of Christian Humanism), “Values and Rights: The Case of the Crucifix” (June 23, 2010), <https://archivio.quirinale.it/aspr/comunicati/PRESSRELEASE-001-008634/presidente/giorgio-napolitano/lettera-del-presidente-napolitano-claudio-zucchelli-presidente-umanesimo-cristiano>.

306. Both Popes expressed themselves in favor of the crucifix in the heist of the respective conflicts they had to live through. See Elena Gaiardoni, *Il tribunale riappende il crocifisso al muro [The Tribunal Reaffixes the Crucifix on the Wall]*, IL GIORNALE, Nov. 1, 2003 (quoting John Paul II’s call to defend “religious traditions” of peoples); Andrea Tornielli, *Storia e cultura si riconoscono nel crocifisso [History and Culture are Recognized in the Crucifix]*, IL GIORNALE, Nov. 30, 2009 (Benedict XVI recalling the “religious, historical and cultural value” of the crucifix). However, while the Catholic Church very vocally opposed judicial decisions ordering to remove crucifixes, it also opposed conservative attempts to enforce their exhibition. See Arachi, *supra* note 112 (The Catholic Church referred to the announcement of mandatory crucifixes in schools as a “despicable” move that “only serv[ed] to create a climate of tension.”).

of clerical sympathies such as Benedetto Croce,³⁰⁷ Piero Calamandrei,³⁰⁸ Natalia Ginzburg, Umberto Eco, or Joseph Weiler.³⁰⁹ Indeed, as a critical historian would say, defenders of the crucifix would rather recite the very secular “Gospel according to Natalia.”³¹⁰

Lastly, the conflict around the crucifix was not centrally about anti-Islamic or anti-immigrant sentiment either. While the theme of Muslim immigration was increasingly gaining prominence in Italian public debate by the time the ECHR issued its ruling, it was never necessary to fuel the resistance to crucifix-removal attempts. The issue was completely absent at the time of the first quarrels about the crucifix in the 1920s through the late 1980s. In the early 2000s, while some of the incidents were, in fact, triggered by the presence of Muslim children in schools, the debate was only marginally framed around a “clash of civilizations” theme: especially from the center-left but also sometimes from the center-right, there was a constant effort to rescue the value of dialogue and integration, which were hindered, rather than fostered, by these judicial crusades.³¹¹ Muslim organizations also were solicitous in detaching themselves from Adel Smith and making clear that they accepted the crucifixes in schools.³¹²

Not about crucifixes, not about the Church, not about Islam. What is the conflict about then? The crucifix dispute is framed, over and over, as a matter of protecting Italian identity. It is framed in that way by those who defend the crucifix in the media, on the bench, in the ministries. This identity was shaped against an ever-changing other: modernity or multiculturalism, Communists or immigrants. This partial shift in discourse around the

307. See *supra* notes 131, 188, and 214 and accompanying text.

308. Piero Calamandrei, a jurist and politician, was one of the Founding Fathers of the 1947 Italian Constitution. In a well-known book, he praised the fact that courts in Italy had a crucifix, so judges are humbled by being reminded of the “biggest judicial mistake in history.” PIERO CALAMANDREI, *ELOGIO DEI GIUDICI* [EULOGY OF JUDGES] 357 (2003). This was cited by the Italian brief to the Grand Chamber. *Supra* note 257, § 15, at 8.

309. *Ciampi riappende il crocifisso “È il simbolo dei nostri valori”* [Ciampi Rehangs the Crucifix: “It is the Symbol of our Values”], *IL GIORNALE*, Oct. 28, 2003.

310. LUZZATTO, *supra* note 88, at 11.

311. See, e.g., *Crocifisso: Europarlamentari Pd, No a guerre su simboli* [Crucifix: PD MEPs, No to a Symbol War], AGENZIA GIORNALISTICA ITALIA, Nov. 3, 2009 (quoting Silvia Costa, Patrizia Toia, and Gianluca Susta, Members of the European Parliament for the center-left Democratic Party).

312. See, e.g., Paolo Grisei, *Torna l’Italia di guelfi e ghibellini “Nelle aule anche i Bronzi di Riace”* [The Italy of Guelphs and Ghibellines is Back “The Riace Bronzes are also in the Classrooms”], *LA REPUBBLICA*, Nov. 4, 2009 (quoting the president of the Union of Italian Islamic Communities, asserting that “taking the crucifix down is not a sign of respect for us, and at the same time it is an offense to Italian traditions”); *Reazioni delle tre confessioni monoteiste: I musulmani* [Reactions from the Three Monotheistic Religions: I Muslims], *LA STAMPA*, Oct. 27, 2003 (quoting the president of the Union of Italian Islamic Communities, stating that “we believe this attack against a religious symbol is an attack against all Italian religious symbols. Therefore, we feel close to those that are now hurt by this decision.”).

boundaries of the Italian identity, which was noted by some participants of the debate themselves,³¹³ can be easily read into the most sophisticated defenses of the crucifix. Natalia Ginzburg, writing in 1988, was addressing atheists and secularists, to whom she emphasizes the universality of the cross.³¹⁴ Umberto Eco, writing in 2003, explained that the crucifix case, such as the chador in France, was “an episode of the conflictive transition” to a multicultural Europe.³¹⁵ However, these two lines of argument are not perceived by Italians to be in contradiction: the crucifix is said to represent neither ethereal abstractions nor chauvinistic barbarism, but a vernacular instantiation of universal values.

However, in its many forms, “identity” came to be used as a “rhetorically self-sufficient argument.”³¹⁶ Defenders of the crucifix tended to invoke Italian or European “identity” as everything they needed to justify their position; questioning them would have amounted to heresy.

These framings suggest an initial way to look at this problem, often, if implicitly, espoused by academics who lament the failure of the ECtHR aborted intervention: An unequal fight between a minority asserting their long-neglected individual rights and the collectivistic, populist reaction of the threatened ethnic nation.³¹⁷ This is, most clearly, the perspective of European human rights law: the ECtHR can only intervene to correct a violation of individual rights; therefore, individual rights must be at one end of the proverbial scale. “At the other end,” as a concurring vote to *Lautsi II* put it, “representing the other limb of the proportionality equation, lies the right of society, as reflected in the authorities’ measure in maintaining crucifixes on the walls of State schools, to manifest their (majority) religious beliefs.”³¹⁸

However, this conflict-of-rights framework is not how public debate in

313. See, e.g., Gian Enrico Rusconi, *Multiculturalisti? No, laici Perché la tolleranza non basta* [*Multiculturalists? No, Because Tolerance Is not Enough*], LA STAMPA, Oct. 27, 1997 (noting profusely about the issue noted already in 1997 that the crucifix battle was shifting from *laicità* to multiculturalism); but see Giordano Bruno Guerri, *Giustizia talebana* [*Taleban Justice*], IL GIORNALE, Oct. 26, 2003 (arguing the opposite, that “Thirty years ago taking the crucifix down meant willing a larger and necessary State *laicità* . . . Today, we are facing the start - just the start - of a pacific Muslim invasion.”). A historian of an opposite persuasion made a similar point in 2003; see a similar point made from the constitutional point of view. See also Augusto Barbera, *Il cammino della laicità, [Laicità’s Road]*, in LAICITÀ E DIRITTO 80 (Stefano Canestrari ed. 2006).

314. Ginzburg, *supra* note 86.

315. Eco, *supra* note 132, at 1.

316. See generally Mark Summers, *Rhetorically Self-Sufficient Arguments in Western Australian Parliamentary Debates on Lesbian and Gay Law Reform*, 46 BRIT. J. SOC. PSYCH. 839 (2007).

317. See Baer, *supra* note 20; Voeten, *supra* note 20; McGoldrick, *supra* note 13; Mancini, *supra* note 20.

318. *Lautsi II*, *supra* note 12, at 35 (Rozakis & Vajic, JJ., concurring).

Italy has presented the conflict. Perhaps more tellingly, it is not how many detractors of the crucifixes themselves looked at their claims. “We are a *laico* state,” we hear over and over, “it’s in our constitution.”³¹⁹ In fact, those involved in the *Lautsi* litigation preferred a decision at the Italian Constitutional Court and turned to the ECtHR only once that door was closed to them.³²⁰ And indeed, they were pursuing the removal of the crucifix not as a matter of fundamental rights, but rather weaponizing rights discourse in order to fight for an alternative view of Italian identity.³²¹ As the director of the UAAR would later declare in an interview, after the first *Lautsi* decision “[w]e thought we could change Italy’s [national culture] . . . we thought we were on the way to changing this country.”³²²

The legal translation of the UAAR’s claims is also illustrative of this frame of the debate. Neither of their initial briefs submitted to the Regional Administrative Tribunal nor the State Council mentioned the children’s individual rights. In their initial complaint before the Tribunal, they grounded their request on the violation of State *laicità* and the duty of impartiality of the administration.³²³ In her conclusive remarks, Soile Lautsi was more explicit: “this is not about protecting freedom of conscience of this or that person, but of protecting the very formation of the conscience. There is no doubt that the exposition of a religious symbol in classrooms has the goal of educating pupils’ conscience towards certain religious values . . . something a *laico* State must not do.”³²⁴

Of course, the claims presented before the ECtHR needed to be formally grounded on the violation of individual rights, but often the underlying political motivation would slip through their claims. In a letter directed to the ECtHR after the first *Lautsi* decision, the UAAR apologized for the behavior of the Italian government, and, after ticking the box of mentioning the violation of some Articles of the Convention, they closed the letter by stating that “[t]he principle of religious freedom and *laicità* is enclosed in the

319. See Ferrero: *Stato laico non si identifica in religioni* [Ferrero: *Laico State Does Not Identify Itself with a Religion*], AGENZIA GIORNALISTICA ITALIA, Nov. 3, 2009 (highlighting that one of the first reactions to *Lautsi I* was the statement of the Secretary of the Communist Refoundation Party, Paolo Ferrero, who asked for an “applause” to the ECHR, since “a *laico* State should respect all religions but identify itself with none”).

320. See BOB, *supra* note 177, at 102.

321. See *id.* at 94 (as Clifford Bob alluded, they would use “rights as spears”).

322. *Id.* at 107.

323. *Crocifisso Padova: Ricorso al TAR del Veneto* [Padua Crucifix: Appeal to the Veneto Regional Administrative Court], UAAR (July 23, 2002), <https://www.uaar.it/uaar/campagne/scrocifiggiamo/20.html>.

324. *Ricorso crocifisso Padova: Memoria Conclusiva, Tribunale Amministrativo Regionale per il Veneto* [Padua Crucifix Appeal: Concluding Statement of the Regional Administrative court for the Veneto Region], UAAR (Oct. 29, 2003), <https://www.uaar.it/uaar/campagne/scrocifiggiamo/26.html>.

Italian Constitution and is a part of our history as Italian citizens and European citizens. We will do our best to make steps on the track of liberty, democracy, equal social dignity for all, with the help of all European citizens.”³²⁵

In the interregnum between *Lautsi I* and *II*, two books were published in Italy regarding the question of the crucifix, neatly representing the two positions. The first one, “*European Religious and Cultural Identity*,” written by law professor Carlo Cardia and prefaced by two prominent members of the Berlusconi government, constituted the basis for the Italian memorandum before the Grand Chamber of the ECtHR. The author concluded his comparative work by noting that “the question of the crucifix constitutes a watershed between two ideas of the Europe we are trying to build. A Europe that interferes with matters that had guaranteed to leave to the autonomy and sovereignty of States, and harms the common (and partly different) cultural and religious of nations, and a Europe that wants to keep national identities. . . .”³²⁶ The other book published in the interregnum between the two *Lautsi* decisions, “*Crucifix of State*,” by historian Sergio Luzzatto, seemed to agree: “Without the crucifix, Italy would not be the same anymore, they say. . . I agree. It would be better.”³²⁷

Italians resisted discussing the crucifix cases in terms of individual rights.³²⁸ One of the most spectacular aspects of the *Lautsi I* decision’s failure in Italian public discourse was this mismatch between the cultural understanding of the crucifix battle and the individual rights frame that was required for the ECtHR to intervene. In order to introduce their claims in the legal realm, opponents of the crucifix had to reframe them as individual rights violations, “portraying them as universal, absolute, and apolitical.”³²⁹ However, an anthropologist writes, judges who are unlucky enough to be called to decide over the matter “are the first to realize this is a cultural [and

325. Tullio Monti et. al., *Lettera aperta sul caso “Lautsi vs Italia,”* [An Open Letter on the Case, “*Lautsi vs Italia*”], UAAR, (Feb. 2, 2010), <https://blog.uaar.it/2010/02/05/lettera-aperta-sul-caso-lautsi-italia/>.

326. CARLO CARDIA, *IDENTITÀ RELIGIOSA E CULTURALE EUROPEA: LA QUESTIONE DEL CROCEFISSO* [RELIGIOUS AND CULTURAL EUROPEAN IDENTITY: THE QUESTION OF THE CRUCIFIX] 133 (2010).

327. Cover Page, LUZZATTO, *supra* note 88.

328. It should be stressed that this does not mean that on occasion individual rights might constitute national identity. Many argue, for instance, that U.S. American identity is at least partly constituted by a particular notion of constitutional rights. See, e.g., Gary Jeffrey Jacobsohn, *Rights and American Constitutional Identity*, 43 POLITY 409, 409 (2011) (“[T]he substance of this identity—‘what we are’—is defined in part at least by the rights and duties that such a document [the Constitution] might embody.”). The argument here, thus, should not be read to say that national identity can never be constituted by individual rights, but rather that arguments about individual rights need to be *also* grounded in national identity if they are to challenge some aspect of it.

329. BOB, *supra* note 177, at 102.

not a legal] issue.”³³⁰

The individual rights frame is routinely rejected as alien to Italian public discourse on this issue. Left and right, across iterations of the conflict, we hear the same insistent, exasperated cry: “I don’t understand how an old tradition could *offend* anyone.”³³¹ Center-left politicians, potentially more friendly to European institutions, also treat this as a categorical mistake: “Judgments that swap human rights violations [with] the exposition of symbols [that refer to] the common cultural and civic bases for our Italian and European traditions do not help.”³³²

When the ECtHR attempted to decide an apparently anodyne case about the right to education, it failed to see how the case could be about Italian national identity. This hints at the broader lesson of *Lautsi*. American constitutional scholars routinely posit that American constitutional law is legitimated through popular ownership over it—through being seen as authored by them.³³³ They are, naturally, skeptical about the possibility of international law legitimating itself in the same way: the centers of production of international law are too detached from the people they are set out to serve, and there is no global demos to own international law anyway.³³⁴ The reactions to *Lautsi* suggest that the people are not ready to

330. GALLINI, *supra* note 64, at 15.

331. This sentence is repeated in almost identical form in many iterations of the conflict. *See, e.g.*, Ginzburg, *supra* note 86 (providing an iteration of this sentence in 1987). In 1997, when the Green Party asked for the removal of the crucifix from the City Council main room in Turin, the spokesman for Alleanza per Torino, Michele Paolino, responded that “the crucifix cannot bother or offend anyone, since it only represents a man who is suffering.” *Si allarga la polemica sul crocifisso [Conflict Around the Crucifix Continues]*, LA STAMPA, Oct. 31, 1997. The sociologist Gian Rusconi noted that “many have always repeated . . . ‘it does not harm anyone.’” Gian Enrico Rusconi, *La sentenza europea. Il crocifisso non è innocuo [European Decision. The Crucifix is Not Innocuous]*, LA STAMPA, Mar. 21, 2011.

332. *Crocifisso: Leoni (LN), Sentenza è parte progetto massonico [Crucifix: Leoni (LN), The Decision is a Part of a Masonic Project]*, *supra* note 228.

333. The idea of the Constitution, or of Constitutional Law, as something emanating from the people’s actions can be read in the work of numerous legal scholars, although the most concise formulation may be Hanna Pitkin’s: “[T]he constitution we have depends upon the constitution we make and do.” Hanna Fenichel Pitkin, *The Idea of a Constitution*, 37 J. LEGAL EDUC. 167, 169 (1987). *See* BRUCE ACKERMAN, *WE THE PEOPLE* 6 (1991) (distinguishing between decisions taken by the government and decisions taken by the American people, the latter being “constitutional decisions”); Robert C. Post & Reva B. Siegel, *Legislative Constitutionalism and Section Five Power: Policentric Interpretation of the Family and the Medical Leave Act*, 112 YALE L.J. 1943, 1982 (2003) (arguing that the Constitution sustains its legitimacy thanks to the “quintessentially democratic attitude in which citizens know themselves as authorities, as authors of their own law”); Judith Resnik, *Law as Affiliation: Foreign Law, Democratic Constitutionalism, and the Sovereignty of the Nation-State*, 6 INT’L J. CONST. L. 33, 35 (2008) (“This practice of law as affiliation obliges both individuals and groups through their words and deeds to take ownership of and make connections with a particular legal regime as facets of themselves.”).

334. The most prominent example of this skepticism is perhaps that of Jed Rubenfeld. Rubenfeld has influentially argued that American constitutionalism is essentially “democratic,” owing its legitimacy to “the many indirect connections between a nation’s judiciary and its democratic processes,” while

give up on popular authorship over the law as a way to establish its basic legitimacy. The crucifix saga does not suggest we should jettison all forms of international court intervention in fundamental matters. Rather, it teaches us that if they are to succeed, they need to show that, despite their foreignness, they can help the people find their better selves.³³⁵

VI. EPILOGUE: THE CRUCIFIX AFTER *LAUTSI*

One decade after the end of the *Lautsi* saga, it might be too soon to tell whether the ECtHR really failed in its intervention. It is true that the Court had to repudiate its own unanimous judgment, leaving unchanged the Italian legal landscape, but it is also true that the first *Lautsi* decision generated an unprecedented debate within Italy about the place of the crucifix in public spaces.³³⁶ The Catholic Church celebrated this outburst of public attention,³³⁷ although perhaps too quickly: the only public opinion survey taken after the *Lautsi I* storm showed a historical low of 60% of support for the crucifix in schools.³³⁸ It would not be unreasonable to speculate that despite the almost unanimous repudiation by the political elite and the immediate outcry among the broader public, the ECtHR granted some previously missing legitimacy to crucifix-removing positions.³³⁹ Indeed, currently, even members of major

European and international courts are “anti-democratic by design,” “displac[ing] the outcomes of political decisionmaking” in the name of the “ideology of universal or ‘international human rights.’” Jed Rubenfeld, *Unilateralism and Constitutionalism*, 79 N.Y.U. L. REV. 1971, 1992, 1997, 2010, 2011 (2004). See also Owen M. Fiss, *The Autonomy of Law*, 26 YALE J. INT’L L. 517, 526 (2001) (acknowledging that in the absence of a global *demos*, international human rights courts “remain unaccountable to the citizens of the world” and therefore should be seen as “a loss for democracy even though [they] further justice.”).

335. See generally Sunstein, *supra* note 24, at 48–52 (arguing for a holistic approach in decisionmaking to better serve the goals of the judiciary).

336. See generally Shai Dothan, *International Courts Improve Democratic Deliberation*, 39 MICH. J. INT’L L. 217 (2018) (discussing the ability of international courts to spark domestic deliberation).

337. *Fisichella: “Impensabile uno spazio pubblico senza quel simbolo”* [*Fisichella: “Impossible to Think of a Public Space Without that Symbol”*], CORRIERE DELLA SERA, Mar. 19, 2011 (“We have to be realistic: if it weren’t [because of *Lautsi*] the crucifix, to many, would have remained an object stuck to the wall. Instead, a big debate over its significance has taken place.”).

338. Giacomo Galeazzi, *Sì al crocifisso* [*Yes to the Crucifix*], LA STAMPA, Jan. 30, 2010. Before that, different opinion surveys oscillated between 75% and 85% of support for the display of the crucifix in public schools. See *supra* notes 169, 185, 238 and accompanying text.

339. Legal theorists and social scientists alike have argued that the U.S. Supreme Court confers sociological legitimacy to the positions it endorses. See, e.g., Rosalee A. Clawson et al., *The Legitimacy-Conferring Authority of the U.S. Supreme Court: An Experimental Design*, 29 AM. POL. RSCH. 566, 567, 580 (2001) (providing a literature review about the “legitimacy conferring hypothesis” and providing empirical evidence that “[the Supreme Court] most certainly [confers legitimacy on a policy]. Its pronouncements can validate policies and, perhaps more importantly in a democracy of more than 300 million citizens, discourage political protest among the portion of the public most apt to take actions against the policy”). No systematic studies exist as to whether the ECtHR, which is less firmly embedded in European law and politics than the American Supreme Court, has a similar effect.

political parties such as the Five Stars Movement can be vocal about their opposition to the crucifix in public spaces.³⁴⁰ However, we would certainly lack data to support this far-fetched speculation: many things changed in the last decade in Italy and Europe, and the decision is seldom cited in Italian public discourse today.

Some people hoped the decision of the Grand Chamber would end the issue of the crucifix.³⁴¹ Of course, it did not. For starters, the structure of the decision does not intend to close the conflict. As legal commentators quickly noted, the ECtHR could at most state a minimum floor for the rights involved, but the question of the compatibility of the crucifix display with State *laicità* under the Italian constitution remains unresolved.³⁴² But, regardless of the legal structure of the problem, the battle over the crucifix remains a site for deeper cultural conflicts pertaining to national identity and its perceived threats. However, it is interesting to see how the *Lautsi* saga does not appear to be a milestone in the following iterations of the conflict.

Take, for example, a bill introduced by the North League into the Lombardy Regional Council some weeks before *Lautsi II* and passed into law some months after the final decision. The original bill, according to which “the crucifix represents the symbol of Christian civilization and culture . . . as a universal value, independent from any specific religion . . . and also contains in it the values of cultural and historical identity, and the concept of brotherhood, peace, and justice,”³⁴³ makes no reference whatsoever to the then-recent *Lautsi I* decision, nor to the fact that a final decision in the case was imminent. The debate within the Culture and Education Committee, held three months after *Lautsi II*, centered around the cultural and religious significance of the crucifix, rather than on questions of law and rights. While the legal assistant to the committee pointed out to a “possible unconstitutionality risk,” because of a “violation of the

340. See *infra* notes 347–355 and accompanying text.

341. See, e.g., *supra* notes 277–281 and accompanying text (stating the content with triumphalist undertones).

342. See, e.g., Marco Bignami, *Il crocifisso nelle aule scolastiche dopo Strasburgo: Una questione ancora aperta* [*The Crucifix in Classrooms after Strasbourg: An Open Question*], in *IL CROCIFFISSO NELLE AULE SCOLASTICHE: LA LIBERTÀ RELIGIOSA E IL PRINCIPIO DI LAICITÀ 3* (Simone Pajno & Pietro Pinna eds., 2012) (pointing out that “obviously” *Lautsi* does not decide on the question on whether the crucifix in the classroom is compatible with State *laicità*).

343. Art. 1 of Progetto di Legge. n. 0074, “*Esposizione del crocifisso negli edifici e nei locali degli immobili regionali*” [*Display of the Crucifix in the Buildings and Premises of the Regional Buildings*], presented by counselors Marelli and 14 more on February 2, 2011 (on file with author). In the act finally passed by the Council, the Region “recognizes the historical-cultural and social values of its judeo-Christian roots,” and accordingly mandates the display of the crucifix in all regional public facilities. Legge Regionale Lombardia 21 novembre 2011, n. 18 BURL n. 47, suppl. Nov. 25, 2011 (It.), “*Esposizione del crocifisso negli immobili regionali*” [*Display of the Crucifix in the Regional Buildings*].

fundamental principle of State *laicità*,” the objection is only mentioned in passing by the center-left member that opposed the initiative. No one framed any objection to the bill as a problem for individual rights.³⁴⁴

A similar thing happened with the few bills presented in both houses of Parliament by the right and the center-right. The bills introduced in the aftermath of *Lautsi I* recognize the ECtHR’s first decision and the “tough reactions that followed, not only in the Catholic world”³⁴⁵ as an antecedent. However, the bills and interpellation requests concerning the crucifix introduced after 2011 erased any mention of the ECtHR.³⁴⁶

The most recent controversies around the crucifix are not framed in terms of rights either, but instead revolve around the same questions of Italian identity. In October 2019, Minister of Education Lorenzo Fioramonti – a philosophy professor affiliated with the Five Stars Movement who had no previous political experience – stated in an interview that he “would rather prefer a *laica* school” and suggested that the crucifix in school should be replaced with “a map of the world, and references to the constitution.”³⁴⁷ Even fellow members of the government coalition, including former Prime Minister Matteo Renzi³⁴⁸ and the Minister of Foreign Affairs (also a member of the Five Stars Movement), criticized him for poor prioritization of problems.³⁴⁹ The Secretary-General of the Italian Episcopal Conference called the Minister to reflection, recalling the crucifix was “a symbol of

344. See *Processo Verbale* n. 11, Session of July 21, 2011 of the Commissione Consiliare di Cultura, Istruzione, Formazione Professionale, Sport e Informazione, Intervention of council members Barboni, Civati, Pizzul, and Valmaggi (on file with author) (showing that none of the members of the Council who voted against the bill used arguments about individual rights, but rather on the religious meaning of the crucifix and its incompatibility with State *laicità*).

345. *Disegno di Legge* 4 novembre 2009, n. 1856, *Legisl. ital. XVI (It.)* (Initiative of Senator Thaler Ausserhofer and 14 others). See also *Disegno di Legge* 18 novembre 2009, n. 1900, *Legisl. ital. XVI (It.)* (Initiative of Senator Caselli and eight others).

346. See *Disegno di Legge* 6 agosto 2018, n. 746, *Legis. ital. XVIII (It.)* (Initiative of Senator Romeo and 49 others). See also *Proposta di Legge* 26 marzo 2018, n. 387, *Legis. ital. XVIII Camera Dei Deputati (It.)* (Initiative of Deputy Saltamartini and four others); *Proposta di Legge* 28 luglio 2016, n. 4005, *Legis. ital. XVII Camera Dei Deputati (It.)* (Initiative of Deputy Simonetti and eight others). All these bills share a common text, although, in the versions introduced after *Lautsi*, they include a few lines about it that were afterwards deleted.

347. *Crocifisso in classe, il ministro Fioramonti contrario: ‘La scuola deve essere laica. Meglio una mappa del mondo’*. *Cei: ‘Avventato’*, [*Crucifix in Class: Against The Minister Fioramonti: ‘The School Must Be Secular. Better to Put up a Map of the World.’*] *Cei: ‘Reckless’*], *FATTO QUOTIDIANO*, Oct. 1, 2019.

348. Cristina Pantaleoni, *Governo, Renzi: ‘Fioramonti pensi a muri più solidi e non ai crocifissi. Al M5S nel 2023 dirò: è stato bello, grazie’*, [*Fioramonti Thinks More Walls Should Be Blank and Not Have Crucifixes. To the Five Star Movement in 2023 He Will Say: ‘This is Beautiful, Thank You’*], *REPUBBLICA*, Oct. 4, 2019.

349. *Di Maio, non è il crocifisso il problema della scuola* [*Di Maio: The Crucifix is not the Problem in Schools*], *AGENZIA NAZIONALE STAMPA ASSOCIATA*, Oct. 1, 2019.

Italian culture” and warned that removing it from schools “would help [North League’s leader, Matteo] Salvini.”³⁵⁰ Salvini reacted by calling the Minister “a comedian” and his words “an act of arrogance and ignorance,” and lamenting that the Church had left to him “defending values and faith.”³⁵¹ Some journalists asked for the Minister’s resignation.³⁵² Fioramonti was supported only by some fringe left-wingers³⁵³ and the largely irrelevant UAAR.³⁵⁴ He had to retreat from this position a few days later.³⁵⁵

In the meantime, however, institutional action was taken. Motions were introduced in regional and local councils to stick the crucifix onto their walls all across the country, in places such as Abruzzo,³⁵⁶ Bergamo,³⁵⁷

350. Paolo Rodari, *La chiesa in difesa del crocifisso ‘Ministro rifletta’* [*The Church Defends the Crucifix: “Minister reflects”*], LA REPUBBLICA, Oct. 2, 2019.

351. Paolo Rodari, *Crocifisso a scuola, la Chiesa contro il ministro Fioramonti che vorrebbe toglierlo dalle classi* [*Crucifix in School: The Church Against Minister Fioramonti, Who Wants to Take it Out of the Classrooms*], LA REPUBBLICA (Oct. 1, 2019), https://www.repubblica.it/scuola/2019/10/01/news/scuola_fioramonti_contro_il_crocifisso_nelle_aule_meglio_una_cartina_del_mondo_-237394202/?_vz=medium%3Dsharebar.

352. See *Crocifisso in classe, Paolo Brosio contro il ministro Fioramonti: “Si dimetta e chiedi scusa”* [*Crucifix in Class: Paolo Brosio Against Minister Fioramonti: “Resign and Apologize”*], IL GAZZETTINO (Oct. 1, 2019), https://www.ilgazzettino.it/italia/primopiano/paolo_brosio_crocifisso_scuola_ministro_fioramonti_oggi_ultime_notizie-4770035.html.

353. See *Scuola: Fratoianni, ‘Fioramonti ricorda semplicemente Costituzione’* [*School: Fratoianni: “Fioramonti Simply Recalls the Constitution”*], ADN KRONOS, Oct. 6, 2019.

354. See *Scuola: Unione Atei, sui crocifissi un bel cambio di passo* [*School: Union of Atheists, a Good Change of Pace on the Crucifixes*], AGENZIA NAZIONALE STAMPA ASSOCIATA, Oct. 1, 2019.

355. See *Crocifisso, il ministro Fioramonti: “Vespaio mediatico. Non è una priorità”* [*Crucifix, Minister Fioramonti: “Media Hornets’ Nest: It Is Not a Priority”*], LA REPUBBLICA (Oct. 2, 2019), <https://video.repubblica.it/politica/crocifisso-il-ministro-fioramonti-vespaio-mediatico-non-e-una-priorita/344890/345473?ref=search>.

356. Consigliere Testa et al., *Mozione No. 4 a Consiglio Regionale Dell’ Abruzzo Sulle recenti dichiarazioni del Ministro dell’istruzione, Lorenzo Fioramonti, in merito all’esposizione del Crocifisso nelle scuole* [Motion No. 4 of the Abruzzo Regional Council on the Ministry of Education’s Recent Declaration Regarding the Display of Crucifixes in Schools], (Oct. 15, 2019), https://www.consiglio.regione.abruzzo.it/sites/default/files/documenti_politici/190130/mozione-4.pdf.

357. *Ordine del giorno in consiglio comunale; Tremaglia: “Crocifisso in classe,”* [*Agenda in the City Council; Tremaglia: “Crucifix in Class”*] CORRIERE DELLA SERA, Oct. 2, 2019.

Castelfranco,³⁵⁸ Catanzaro,³⁵⁹ Milan,³⁶⁰ Perugia,³⁶¹ Pisa,³⁶² and Veneto.³⁶³ Again, those advocating for keeping the crucifix focused on national identity, emphasized that “[a] people without roots is a people without future.”³⁶⁴ This time, however, opponents of the initiative did not center on individual rights, but rather on a different conception of what these roots were: “Here we do politics, and religion should stay away from politics. It’s not me or the Five Star Movement to say that: it’s our constitution.”³⁶⁵

The crucifix debate is now a century old. Many things have changed since it was understood as a dispute between socialists and Catholics. One thing did not: for good or ill, the paraphernalia around the crucifix came to represent a part of what it means to be Italian. For some, as Umberto Eco, this forecloses the possibility of any legal intervention: legislating over “passionate impulses” like this would be like “explaining to a lover on the verge of suicide why he or she was abandoned.”³⁶⁶

One cannot refute poetry, but I would not go that far. A court could someday intervene in this area with some success. Perhaps the prestigious Italian Constitutional Court will someday accept the challenge and test its institutional capital on such a complicated issue. However, the day this situation arises, a court can hope to succeed only if its decision allows for telling a story that also shows what Italy is. The judicial order that one day might accomplish the task of removing the crucifix will succeed only if it can be grounded on something as venerable as the crucifix itself.

358. Francesco Dondi, *Cinquanta crocefissi tornano nelle scuole* [*Fifty Crucifixes Return to Schools*], GAZZETTA DI MODENA, Oct. 5, 2019.

359. *Crocifisso in aula a Catanzaro, consiglieri lo donano alle scuole* [*Crucifix in the Classroom in Catanzaro, Members of Council Donate Them to Schools*], AGENZIA GIORNALISTICA ITALIA, Oct. 2, 2019.

360. *Lega appende crocifisso in aula a Milano* [*League Hangs Crucifix in the Chamber in Milan*], AGENZIA NAZIONALE STAMPA ASSOCIATA, Oct. 7, 2019.

361. COMUNE DI PERUGIA, ATTI DEL CONSIGLIO COMUNALE [MUNICIPALITY OF PERUGIA, ACTS OF THE MUNICIPAL COUNCIL], (July 23, 2018), <https://www.comune.perugia.it/MC-API/Risorse/StreamRisorsa.ashx?guid=39daf626-47ca-4aa7-9319-f6818858d3ea>.

362. Consiglio Comunale di Pisa, *Consiglio Comunale di Pisa - Seduta consiliare del 6 novembre 2018* [*Pisa City Council - Council Meeting of 6 November 2018*], YOUTUBE, at 2:33:20 (Nov. 8, 2018), <https://www.youtube.com/watch?v=RBLyIVDdUss>.

363. Consiglio Regionale del Veneto, Resoconto 31ª Seduta Pubblica [Veneto Regional Council, Report of the 31st Public Session] (Mar. 9, 2016), <https://www.consiglio.veneto.it/resoconti-e-verbali> (look for “Ricerca Avanzata;” then search the date of the session, 09/03/2016).

364. Consiglio Comunale, Comune di Prato [City Council of Prato], Dec. 12, 2019, http://webtv-consiglio.comune.prato.it/watch/Consiglio_Comunale_20191212_1500 (intervention of Council member Ovattoni).

365. *Id.* (intervention of Council member La Vita).

366. Eco, *supra* note 132.