

## Article

# Dealing with Death in a Secular Society: The Case of Muslim Burials in Spain

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**Abstract:** Death is not only a universal biological fact; for the individual it is the “event horizon”. This fact has important symbolic meanings and complex social consequences. Any society, secular or not, must manage this reality. What response is given to the question of religious phenomenon in general, and to funerary practices in particular, in a secular society in which individuals with different religious sensibilities coexist? This article aims to analyse the response given by the Spanish state to the questions raised regarding burials by Muslim communities, the most widespread minority group in Spain as a whole. This response, which would be framed within what could be called a ‘cooperation model’, has encountered some difficulties as a result of the territorial organisation of the Spanish state. Despite this, the willingness to cooperate on the part of both the administrations that make up the state and the Islamic communities has made a situation of stable coexistence possible.

**Keywords:** secularism; funerary practices; burials; Muslim communities; Spain



**Citation:** De León, Juan Luis, and Iziar Basterretxea. 2023. Dealing with Death in a Secular Society: The Case of Muslim Burials in Spain. *Religions* 14: 825. <https://doi.org/10.3390/rel14070825>

Academic Editors: Dyron B. Daugherty and Martin Hoondert

Received: 18 April 2023

Revised: 16 June 2023

Accepted: 21 June 2023

Published: 23 June 2023



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## 1. Introduction

Faced with the fact of religious pluralism, states’ options have ranged from persecution or rejection, to acceptance and protection, to disinterest. Something similar happens with the definition of secularism. A negative concept for those who interpret it as a rejection of the religion in the public domain, a positive one for those who understand it as a space for the development of more humane societies. In any case, even those who understand it positively have not reached an agreement as to which are the most appropriate ways of putting it into practice.

In this work, starting from a positive conception of secularism in its political meaning as a sphere of possibility for peaceful and fruitful coexistence between different options, we have focused on one of these “need to put into practice” affairs, the management of death; more specifically, burials according to the Islamic practices in present-day Spain.

Spanish society has undergone a profound process of secularization in recent decades, particularly after the restoration of democracy in 1978. It has experienced a strong change in its religious beliefs (Pérez-Agote and Santiago García 2005; Ruiz Andrés 2017, 2022; Urrutia 2020). According to a WIN/Gallup International (2015) survey, Spain is one of the European countries, after Sweden and the Czech Republic, with the highest percentage of adults who declare themselves atheist or non-religious (Gallup International 2015; Zuckerman and Shook 2017, p. 8). On the other hand, a macro-survey carried out in 2021 by the Statista Global Consumer Survey, maintains that 59% of those surveyed in Spain state that they adhere to a creed, a value identical to that registered in other European countries such as Austria, Switzerland, Germany and Denmark (Mena Roa 2022). Recent surveys conducted by the Centro de Investigaciones Sociológicas (CIS) show that approximately 40% of Spaniards declare themselves agnostic, atheist or non-believers (Centro de Investigaciones Sociológicas 2023, p. 16).

The *Constitución Española* (1978) guarantees the ideological, religious and worship freedom of individuals and communities, declares the non-confessional nature of the state

“No confession shall have state character”; art. 16.3) and sets that the state should promote “relations of cooperation with the Catholic Church and other confessions” (Art. 16.3). In order to develop the Constitution, the state has established cooperation agreements with religious denominations considered as notoriously rooted in the Spanish society: Islam, Judaism and Evangelical Christianity. These agreements contain references to worship centres, schools and cemeteries, among others.

Even so, from time to time, and mainly among Muslims, issues relating specifically to cemeteries appear in the news, whether they be reporting positively (Comisión Asesora ADOS 2022; Metroscopia 2011; Rioja Andueza 2022) or complaining (Ibáñez 2023; Observatorio 2022b; Vega Medina 2023) about the situation of Muslim burials. However, a review of the jurisprudence of the high courts of the Autonomous Communities does not reflect any problems in this regard.

Death is an inevitable fact to be faced not only by individuals but by societies. No society, secular or whatever, can escape from it and, in fact, funerary rites and practices have more to do with social contexts than with the deceased themselves.

The consideration of, on the one hand, the importance of these funerary rites and practices for any society, and on the other, the apparent contradiction among information about Muslim burials in Spain, has led us to the questions that guides this article: How is the cooperation agreement between the state and the Muslim communities being fulfilled in practice? In addition, what difficulties are encountered and what answers are given by both sides?

The issues related to funerary practices are multifaceted, with emotional, social, political, economic and ecological components that in each case may be more or less relevant; however, as we cannot cover them all, we have focused here on the anthropological and normative aspects.

Regarding the methodology followed in this article, it is important to clarify that we have used secondary sources. Among the analysed documents there is sociological and historical research and reports about Muslims in Spain, funerary enterprises’ reports, Muslim Communities reports and burial laws both from the state and from the Autonomous Communities.

This article first presents a brief theoretical framework on the concept of secularism and, associated with it, the concept of spatial justice; added to those, is an anthropological approach to the social and personal value of funerary practices (Section 2). A second part presents an overview of Muslims in Spain (Section 3). This is followed by a description of current Muslim funerary practices with a brief look at their history (Section 4). After reviewing the Spanish regulations on cemeteries and burials (Section 5), this article ends with some discussions and conclusions (Sections 6 and 7).

## 2. Secularism and Funerary Practices

### 2.1. Secularism

As Berlinerblau points out, there is no clear agreement on what is meant by the term “secularism” (Berlinerblau 2022, pp. 5–9). Among the multiple definitions, in this article we stand with those who interpret it as a system for articulating religious plurality in a neutral state that guarantees freedom of worship to its citizens (Casanova 2009, p. 1051). Speaking in the same positive sense, Habermas (2015, p. 269), for whom “secular” entails a reasonable response to the need for peaceful coexistence in plural societies, and which, in his opinion, has allowed religious minorities to move from mere tolerance to the recognition of rights. Similarly, the aforementioned Berlinerblau, points out the following as a basic definition: “political secularism refers to legally binding actions of the secular state that seek to regulate the relationship between itself and religious citizens, and between religious citizens themselves” (Berlinerblau 2022, p. 5).

In his work *Life World, Politics and Religion*, Habermas devotes the last chapter to religion in the public sphere of post-secular society. In it, he stresses that immigration provokes in the receiving societies the “challenge of a pluralism of ways of life, which goes

beyond the challenge of a pluralism of faith currents" (Habermas 2015, p. 268). In other words, the problems of coexistence between people of different religions are exacerbated by being associated with problems for the social integration of people with different cultures.

In the context of this discussion, Habermas, poses the following question: "How should we understand ourselves as members of a postsecular society, and what should we expect from each other in order to ensure in our states a civil treatment of citizens towards each other even under the conditions of cultural and ideological pluralism?" (Habermas 2015, p. 381). Habermas' proposal has two aspects: on the one hand, he proposes a process of reflection and permanent democratic learning in which citizens, from different positions, translate, justify and debate their proposals. On the other hand, he stresses that the success of these processes depends on the acceptance of common values and that no one position should claim to be the sole guide to the world of life. Applied to religions, this means that no religion can claim to determine all aspects of people's lives and of society (Habermas 2015, p. 81).

Without going into definitions, Charles Taylor describes the secular social environment as consisting of "... among other things, in the move from a society in which faith in God was unquestioned and, indeed, far from problematic, to a society in which such faith is regarded as one option among others, and often not the easiest to adopt" (Taylor [2007] 2014, p. 22). In other words, religious belief becomes just another belief, which leads to the question of whether or not "Now that religion is no longer the only social force able to challenge the state should not religion then be allowed to follow the same rules as other members of civil society when they participate in the public sphere?" (Martin 2013, p. 150).

The question obviously deserves a moment's pause because the question of plurality and how to respond to it is not something to be taken lightly. Indeed, some authors have pointed out some problems that can arise from the uncritical assumption of the goodness of plurality. In his short article "*Five Confusions About the Moral Relevance of Cultural Diversity*", Ernesto Garzón Valdes, after justifying why he considers it a mistake to confuse tolerance with moral relativism and cultural diversity with moral enrichment, argues for the practice of an active tolerance that has no qualms about rejecting the intolerable. He insists on the importance of democracy in respecting what he calls the "preserve" of primary rights that escape any majority (or community, we would add) decision. He adds that the justification of the limits of tolerance must be debated and argued with "universalisable reasons; excluding, when designing social institutions, the appeal to non-transferable personal convictions such as those invoked by religious or ethnic fundamentalists" (Garzón Valdés 1997, p. 5). Plurality only has value if it is able to respect the rights of all people and guarantee them the possibility of satisfying their basic needs.

In the same critical vein, Giacomo Marramao notes that "Western democratic societies today are confronted with the claim to citizenship of culturally differentiated individuals or groups, who, while instrumentally demanding recognition of their rights, refuse to grant universal legitimacy to democratic formalism" (Marramao 1996, p. 91). In order to give an adequate response to this question, Marramao highlights three points: first that the ethnocentric component of Western universalism, which has fuelled the politics of difference that challenge democratic values, must be assumed. Secondly, he understands that we must overcome the axiom of the incommensurability of cultures, include the moment of symbolic interaction between cultural contexts (instead of cultural differences) and, thirdly, defend the value of democracy as a "common place of uprootedness" (Marramao 1996, p. 96).

If the definitions and positions on secularity are many, the way in which these definitions are put into practice is no less so. Berlinerblau (2022, pp. 49–126) considers several basic models of secularity or, as he prefers to call it, "political secularism". The three main models that Berlinerblau mentions are the "separationist framework" (the case of the United States), the "laïcité" (France) and the "accommodationist framework" (India).

Against this "doctrinal" backdrop, Bhargava proposes shifting the focus from doctrines to the normative practices of states: "Once we do this, we will begin to see secularism

differently, as a critical perspective not against religion but against religious homogenization and institutionalized religious domination.” (Bhargava 2011, p. 92).

Analysis of secular practices in different states reveals, on the one hand, that there are multiple models of secularism in democratic and non-democratic states, as well as in some countries with large Muslim populations, such as India, Senegal and Indonesia (Stepan 2011, p. 115), and on the other hand, it highlights the importance of setting limits on what can be accepted. For example, the state must be sensitive to the moral integrity of religions, liberal and illiberal, but it cannot tolerate any of the four forms of oppression: “interreligious, intrareligious, domination of religious by secular, and domination of secular by religious” (Bhargava 2011, p. 110), and neither should religions (Martin 2013, p. 160). The state must also accept that human beings feel connected to transcendent entities, including God, and that this must be visible in individual beliefs as well as in social practices, but “A secular state has its own secular ends”. (Bhargava 2011, p. 97).

Bader further suggests that the concept of secularism should be dropped from our constitutional language as it is, not only a “complex, polysemic and contested concept but also a “fuzzy”, chameleon and highly misleading concept” (Bader 2017, p. 341). Moreover, and more importantly, this author suggests that the principle of constitutional secularism hides from view the tensions among secularism, liberal constitutionalism and democracy. What really matters is not if the state is secular or not but “whether it is decent and/or liberal-democratic” (Bader 2017, p. 340).

To conclude, in this article and very close to Berlinerblau’s general definition, even if we are not discussing here any of the definitions, we assume a positive conception of secularism understood as a set of rules that establish a playing field in which citizens of different beliefs, religious or not, can coexist and develop peacefully and in solidarity. Likewise, we assume that this playing field must be established taking into account that the human being is not only an emotional, rational or economic being, but also a being that inhabits and interacts in spaces (and the cemetery is a space designed by the living for the dead). In relation to this aspect, we present the following epigraph.

## 2.2. Spatial Justice

In recent decades, a concept related to space and urban design has become increasingly important: “spatial justice”. This concept can be understood from Henry Lefebvre’s “Theory of Spaces” (Lefebvre [1974] 1991) and Edward W. Soja’s “Spatial Justice” proposal (Soja 1996, 1997, 2000, 2010). The starting point of these authors is that space is not a mere external environment or container, a neutral scenario, but a social product, the fruit of certain historical and present relations of production that are materialised in a certain spatio-territorial form. From this perspective, human life is temporal, social and spatial, simultaneously and interactively, and is therefore always engaged in a socio-spatial dialectic.

Soja reformulates Lefebvre’s approach by incorporating the concept of “spatial justice” (Soja 1996, pp. 53–82). This concept posits how space is involved in generating and sustaining different processes of inequality, injustice, exploitation, racism, sexism and so on. The spaces that are shared reflect the type of society that is being created (Johnson 2008; Soja 2009, 2010; and Harvey [1973] 2009, although he speaks of “territorial injustice” p. 107).

Soja classifies the spaces of injustice into exogenous and endogenous geographies. The former is produced by impositions of hierarchical power (unjust exogenous geographies). This would be the case, for example, with apartheid. The second (unjust endogenous geographies) derive from decisions related to the location of services, infrastructure, projects, and their consequences on spatial distribution, evidenced in, for example, the inequitable distribution of basic urban services, such as public transport, clinics and schools. (Soja 2000, pp. 197–202, 2010, pp. 31–66). Spatial thinking thus links the quest for spatial justice with the pressures and struggle over what Lefebvre called the “right to the city” (Lefebvre [1968] 1978). However, these authors do not mention cemeteries.

In any case, the right to the city was first defined in 2005 by the *World Charter for the Right to the City* as “the equitable use of cities within the principles of sustainability, democracy, equity and social justice”. Its first article assesses that, “All persons have the Right to the City free of discrimination based on gender, age, health status, income, nationality, ethnicity, migratory condition, or political, religious or sexual orientation” (*World Charter for the Right to the City* 2005, p. 2). The European Union is also increasingly concerned about making this concept a reality based on the criteria of spatiality, integration and inclusion in order to contribute to better territorial cohesion. (Madanipour et al. 2022).

From this perspective, “spatial justice” can also be circumscribed to the spaces designed by the living for the dead: cemeteries. Cemeteries should also be inclusive places that reflect the same inclusiveness sought and projected for the spaces of the living. In a city designed under the concept of “spatial justice”, cemeteries should also be places where any citizen (including Muslims) can feel that his or her mortal remains have been duly received without any discrimination.

In the following section, we develop some ideas that, in our opinion, justify a secular state paying attention to the funerary practices performed by any of its citizens.

### 2.3. Funerary Practices

The wide variety of mortuary customs and rituals collected by the extensive ethnographic literature (e.g., Azevedo 2008; Barley 1995; Bloch 1994; Bloch and Parry 1989; Douglass 1969; Madariaga 1998; Rojas 2016) shows the importance of death for all human beings. Beyond the body’s disposal, the meaning of these rites can be varied: transcendence/survival (Bauman 1992), regeneration of life and reaffirmation of the social order, as well as the relationship between generations and legitimation of authority (Bloch and Parry 1989) or a prolonged dialogue about the notion of personhood (Barley 1995).

Robert Kastenbaum defined the “death system” as “the interpersonal, socio-cultural and symbolic network through which an individual’s relationship to mortality is mediated by his or her society” (Kastenbaum 2001, p. 66). In pre-industrial societies, death had a clearly social, communal dimension. The death of a member of the community disrupted social organisation and highlighted the risks to the survival of the community, requiring a response that reorganised society and averted the danger (Hertz 1990). Such behaviour was widespread well into the 19th century and even into the early decades of the 20th century.

However, modern instrumentality has deconstructed mortality, stripping death of meaning and seeing it as a useless leftover of life and as “the Other of modern life” (Bauman 1992, p. 131). Philippe Ariès called “inverted death” or “forbidden death” the characteristic model of 20th century Western societies. Death, once so present, is going to fade away and disappear. The progressive process of individualisation, together with the medicalisation of death, consolidated the “social indifference” to the loss of one of the members of the group and the perception that death was more a personal than a social problem. Medical technology became the new instrument for domesticating mortality, replacing religion in this function (Ariès [1977] 1999, [1975] 2000).

Today, a large part of the population is dying in hospitals. It is not usually the preferred place to die; however, when the dying patient has not expressed their will about where to die, families generally send him to the hospital for the greater security that it offers them (Lima-Rodríguez et al. 2018). Many times, the corpse is quickly sent to a mortuary where those who want to say goodbye look at it through a glass window before it is buried or cremated. The collective support provided by traditional ritual is lost and the living are left without references for gestures to relieve their grief and symbolically facilitate the deceased taking their place among the dead (Barley 1995, p. 132; Segolene 1998, p. 62). The recent situation of the COVID-19 pandemic has shown how hard it has been for many families not being able to say goodbye to their loved ones or having been able to celebrate the usual funeral rituals (Burrell and Selman 2022; Prieto Carrero et al. 2021).

Although funeral rites are transformed into a public celebration of a private experience, adapted to the individual characteristics of the deceased or those who remember them, they



are far from disappearing (Segolene 1998, pp. 63–67). New technologies can also influence funeral rituals and the way people deal with death. Thus, for example, more and more terminally ill people are sharing their experiences and personal process in blogs (Kemp 2018, pp. 385–86).

In largely secularised societies, where personal belief is autonomous from denominational orthodoxy (Rodríguez et al. 2021), funerary practices may be distanced from religious customs even among those who claim to belong to a religion. Thus, Spain, a country which, until a few decades ago, had a strong Catholic tradition, is the country in the European Union that cremates its dead the most (Palacio 2023), whereas the Catholic Church only allowed cremation from 1963, and, from 1997, a funeral liturgy in the presence of cremated remains, which have to be buried. In fact, in 2005 the average number of cremations in Spain was 16%, reaching 41% in 2018, and it is estimated that it will reach 60% in 2026 (Díaz Pedraza 2022, p. 88).

In short, the multiplicity of funeral rites existing in today's societies, whether associated with a religion or not, traditional or innovative, reflects the variety of communities that make them up, as well as the multiplicity of meanings that people give to their lives. All societies, including the most secularised ones, must manage the treatment of these plural practices and sensibilities surrounding death.

### 3. Sociological Data on the Reality of Muslims in Spain

Spain currently displays great religious diversity. As we do not have precise data because each confession estimates the number of its faithful with different criteria, we must consider the following data as approximate (Dahiri 2022). The Spanish Episcopal Conference estimates that there are 32.6 million Catholics; the Federation of Evangelical Religious Entities of Spain considers that there are 1.7 million Evangelical Christians, 900,000 of whom are migrants; the Union of Islamic Communities of Spain puts the number of Muslims at 2.3 million; and the Federation of Jewish Communities of Spain groups together 40,000 Jews. With each of these accounts, the Spanish state has established "Cooperation Agreements" in compliance with Article 16.3 of the Constitution.

In this context, and given that this paper focuses on Islam, this section presents some data on the social situation of Muslims in Spain. Beyond being a homogeneous reality, the plurality of Spanish Muslims is manifested in relation to their origins, their language and the way they live their faith (Casa Árabe-IEAM 2009, p. 12; Moreras 2013, 2017; Planet Contreras 2013, p. 266). On the other hand, there are Spaniards of Spanish origin who, for various reasons, profess the Muslim religion (Rosón and Tarrés 2013, pp. 249–64).

It is not easy to know the exact numbers of Muslims in Spain, as the question of religion does not appear in most official surveys. The reports of the Centro de Investigaciones Sociológicas (CIS) only ask whether the person is Catholic, or of another denomination—without specifying which one—agnostic or atheist, and the Population and Housing Census in its last wave (2021) will not have data until 2023, the last one being from 2011. We can add the reports by Metroscopia, which in its fifth wave collects data from the 2011 Census, and those prepared by the Union of Islamic Communities of Spain (UCIDE) on Muslim citizens in Spain. These, as of 31 December 2021, are based on data from the General State Administration and UCIDE's own registers and include as Muslims the descendants, up to the third generation, of those who came to Spain in the 1950s.

The two studies are hardly comparable. Metroscopia's survey has Muslim immigrants as its study universe (excluding Muslims born in Spain) and is an opinion survey; UCIDE's survey is based on official data about "all" Muslims. The results are, logically, diverse and are summarised below.

#### 3.1. The Metroscopia Report (Metroscopia 2011)

Among the results of the study, three fundamental aspects stand out: religiosity, the desire to integrate and the positive evaluation of Spanish society.

Regarding religiosity, 53% of respondents declared themselves to be practising Muslims and 12% nonpractising Muslims. However, religion ranks fourth in importance in their lives (88%), behind family (99%), work (97%) and money (92%). The authors underline that they favour a secular state that does not give special treatment to any religion, and their adherence to Islam seems more identitarian than a defence of religious orthodoxy.

Talking about integration, 67% feel at ease in Spain, most speak Spanish well and say they do not encounter any obstacles to the development of their religious beliefs. Among those who mention an obstacle (10%), most point to the shortage of mosques. There is no mention of cemeteries.

Finally, they value Spanish society and institutions and the treatment they generally receive from them. They value equal treatment in health care, equality between men and women, the general standard of living and consider (93%) that Muslims and Christians make an effort to understand and respect each other. In general, they perceive little negative social reaction to the Muslim religion (Perceived: 36%).

Despite the good results, the authors question to what extent the data reflect reality or are mediated by what they call the influence of social desirability, i.e., what immigrants think they are expected to answer.

### 3.2. *The Report of the Union of Islamic Communities of Spain (UCIDE) (Observatorio 2022a)*

Produced in 2021 and much shorter (14 pages), this report does not collect opinions, but rather data from the records of the General State Administration and the Union of Islamic Communities of Spain itself. The collected data refer to the Muslim population in Spain, both immigrant and native, according to different variables such as place of origin and nationality, Muslim population in the different Autonomous Communities and within them, as well as by provinces. As mentioned above, it considers all descendants, up to the third generation, of those who came to Spain in the 1950s to be Muslims.

The report begins by noting that “Maleki and Hanafi (Sunni) rites (*sic*) are the most widespread in Spain for the practice of Islamic worship” (p. 2). It also gives data on the number of Islamic entities in Spain: “52 Islamic confessional federations (including Comunidad Islámica de España, CIE), 1819 religious communities and 21 confessional associations” (p. 14). These figures show the internal diversity of the group, although the Islamic Community of Spain (CIE), the legal entity in charge of monitoring the cooperation agreement with the Spanish state, does not include all of them.

On the question of cemeteries, the two reports diverge. In the *Metroscopia* report, Muslims interviewed did not report any perceived lack of cemeteries, while UCIDE’s report indicates that 95 per cent of communities do not have a cemetery or *almachara*. It is not clear which entities are meant by ‘Islamic communities’, whether it is each of the entities registered in the Register of Religious Entities or those at the municipal level. This distinction is important because in a municipality there may be several registered entities whereas public cemeteries exist at a municipal or supra-municipal level.

In short, the reality of Muslims in Spain is more complex and plural than might be expected from the fact that the state recognises that a single entity, the Islamic Commission of Spain, has the legitimacy to represent the interests of all Muslims.

## 4. Burials in Islam: Basic Funerary Practices and Legal Considerations

### 4.1. *Basic Funerary Beliefs and Practices*

It is important to know what the basic funeral practices of Muslims are. Some of them, according to circumstances, could somehow affect the mortuary policy of Western countries, in our case Spain. A brief review of history shows that these practices were not always the same and varied according to circumstances and cultures. This suggests that, as with mortuary practices in Western countries, Muslim funeral practices may also undergo changes.

The Qur’an is not very explicit about how Muslim funerals should be conducted (Campo 2001, p. 263), but it gives indications of the custom of burial in direct contact with

the earth (Qur'an 7: 19–25; 77: 25–26). Further information is provided by the *sunna*, the body of Muhammad's sayings and deeds and his way of proceeding as attested by the *ashab*, his contemporaries and companions. From the Qur'an and the *sunna* emerge a series of funerary guidelines for the Muslim world, which are summarised below. It is essential that the body is washed and buried as quickly as possible, preferably on the day of death, but no earlier than eight hours, and no later than twenty-four hours. The corpse must be respected because it is to be returned on the Day of Resurrection (yaum al-Qiyama), so embalming and autopsy are not recommended unless strictly necessary, and cremation is prohibited.

The corpse will be washed by men if it is a male and by women if it is a female (Bennett 1994, p. 108). It is then wrapped from head to foot in white linen, in three pieces if male and five pieces if female (Sakr 1995, p. 62). The corpse will be placed on a flat board (Lapidus 1996, p. 154; Sakr 1995, p. 64), in a slightly foreshortened position, with the eyes facing Mecca, the arms outstretched at the sides of the body and the feet pointing south.

The characteristics of Muslim cemeteries are austerity and uniformity. The deceased are buried in absolute anonymity, the acquired social status disappears, in order to emphasise the religious sense of the eschatological afterlife (Martínez Núñez 2011). Consistently, the style of tomb construction is characterised by simplicity and economy of cost. The deceased should be buried in the locality in which they lived/died. The burial consists of a hole in the ground that completely conceals the corpse (Ekpo and Is'haq 2016, p. 62). All Muslims, rich or poor, are buried following the same procedure. It is not permitted to bury the deceased in the coffin unless there is a requirement that must be met in a particular area or country (Ekpo and Is'haq 2016, pp. 61–62). Shared graves are only permitted in times of war or epidemic (Simpson 1995, p. 242). If there are multiple graves, the Muslim graves must be separate from those of non-Muslims.

However, historical documents and some current studies show that burial customs and forms of burial, while maintaining the position facing Mecca and with the body in the ground, have varied over time as well as according to social groups and territories. In the case of Spain, historical texts, especially those of Al Tafri (10th century) and Yça de Segovia (15th century), reflect customs that differ from those of today. It states that there is no established rule and that whoever knows best should bathe the dead, that the man should bathe his wife and the woman her husband and young boys (Abboud-Haggar 1999, pp. 172–73; Echevarría 2020, pp. 100–1, note 67).

On the other hand, the excavations of the Islamic cemeteries in Toledo and other cities of the Islamic period in the Iberian Peninsula, show that overpopulation forced communities to bury several persons together in a single tomb (Echevarría 2013, p. 359). They show the reuse of some tombs, even of the Muslim rite, by simply covering the ground again with earth to fulfil the precept of resting on the ground (Echevarría 2020, p. 83). The position of the body, which was originally in strict lateral decubitus, also changed. The tombs of the wealthiest became more conspicuous, and the practice of customs originally rejected by jurists, such as visits to the cemetery (Christys 2009, p. 298; Davoudi 2022, pp. 232–33) and mourners at funerals (Echevarría 2020, pp. 84–85; Halevi 2007, p. 114), has been recorded. Even today, depending on the local practices of the various countries where Islam has become firmly established, differences can still be found. Thus, for example, for mourning in North Africa women will wear white, in the Middle East they wear black, and in Turkey they will choose subdued colours (Jonker 1997, p. 160).

Generally speaking, a large proportion of middle-aged Muslims living in Europe maintain traditional funeral practices and beliefs about the afterlife (Ahaddour et al. 2017; Kadrouch Outmany 2016, p. 104; Subirats 2014–2015, pp. 58–59). Even so, today there is a “growing individualisation in the religiosity of Muslim communities” (Moreras 2017, p. 32). This development entails redefining rituals that become more an identity question than a strictly religious one, and act as active negotiation mechanisms with respect to European societies, as in the Spanish case analysed here.



On the other hand, as we will see below, the Muslim legal tradition offers examples of flexibility and adaptability to new circumstances, with regard to funerary needs.

#### 4.2. Legal Considerations: The Muslim Principle of *Maslahah Mursalah* (“Public Interest”)

The term *maslahah* designates in Islam that which is in the public interest or welfare. Strictly speaking, *maslahah* means “utility”, but in general terms, *maslahah* denotes “cause or source of something good or beneficial” (Khatturi 1991, p. 738; Opwis 2005, p. 182; Salvatore 2007, 2009, p. 194). *Maslahah* is the interest or benefit for which there is neither legitimate supporting evidence in the Islamic sacred sources nor a claim to the contrary (“unrestricted” utilities, utilities not enjoined or excluded by revelation)” (Kamali 2003, p. 362; Opwis 2010, pp. 9–13; Vogel 2000, p. 372). Jurists use this concept to mean “general good” or “public interest” (Kayikci 2019, p. 6). It is the principle by which Allah is moved by considerations of utility and universal good (Pareja 1975, p. 226).

To put the principle of *maslahah mursalah* into practice, three conditions are required: (1) It must be a real interest to benefit people or prevent them from harm. (2) It is in the public interest of the nation as a whole or the majority, not to serve personal interests or the interests of a particular group. (3) Provisions based on the general interest are not expressly regulated by the Qur’an, the *sunna* or the consensus of the scholars (*ijma’*) (Haryati Ibrahim et al. 2022, p. 123). In any case, the *maqasid shariah* or principles of *shariah* must be respected: religion, life, intellect, lineage and property.

Malik ibn Anas (d. 179 A.H./795 A.D.) is credited with being the first jurist to make decisions on this principle (Alias et al. 2021; Esposito 2003, p. 189; Khatturi 1991; Salvatore 2007, p. 156). In Spain it appears in the mentioned medieval author Yçar de Segovia (Yça Jabir n.d.). Some Qur’anic principles capture the essence of the concept of *maslahah*, such as those that point out that Allah’s message to Muhammad is not intended to be a burden but to offer divine mercy to all humankind, regardless of any barriers (Qur’an 5:6). Only the Shafi’i school does not admit legal opinions based on *maslahah* because it holds that there can be no *maslahah* outside the Shari’a (Kamali 2003, pp. 362–64; Esposito 2003, p. 195; Soufi 2021).

In present days, this concept has become the subject of increasing interest among those jurists who have sought legal reforms to meet the needs of modern conditions in Islamic society. Since, in any case, *maslahah* implies respecting the five principles of the Shari’a, it might seem that there is an incompatibility between this principle and the secularised democracies of the West. However, these democracies, from a secular and non-denominational perspective, respect the same values, such as the ones mentioned previously: religion, life, intellect, lineage and property. This means that between contemporary Muslim culture and Western culture there can be found a certain degree of “reasonableness” (Mangini 2018, p. 20) in order to promote the common good. This degree of “reasonableness or compatibility can also be seen, as shown below, in relation to the question of cemeteries.

## 5. Funeral Legislation: The Spanish Legal Framework

The approval of the current Spanish Constitution (Constitución Española 1978) in 1978 gave birth to a dramatic change in the organization of the Spanish state. With freedom, justice, safety, equality, solidarity and pluralism as prime principles, the Constitution in its Part VIII, referred to as the “Territorial Organisation of the State” in its Chapter One, settled that “The State is organised territorially into municipalities, provinces and Autonomous Communities that may be constituted. All these bodies shall enjoy self-government for the management or their respective interest” (Art. 137). Chapter Three of the same Part VIII assesses that “In the exercise of the right to self-government recognised in Article 2 of the Constitution, bordering provinces with common historic, cultural and economic characteristics, island territories and provinces with historic regional status may accede to self-government and form Autonomous Communities in accord with the provisions contained in this Title and in the respective Statutes” (Art. 143.1). Articles 148 and 149,

respectively, fix the competences (powers) that may assume the Autonomous Communities and those that will hold the state, exclusively.

As a result, Spain is presently territorially decentralised and formed by 17 Autonomous Communities, each one with its Statute (the agreement that establishes the Community's powers) its Government and its Parliament with legislative power. There are also two Autonomous Cities (Ceuta and Melilla, in the north of Africa) where the majority of the population is Muslim.

Equally, the Spanish Constitution of 1978 ([Constitución Española 1978](#)) guarantees the ideological, religious and worship freedom of individuals and communities, declares the non-confessional nature of the state (Art. 16.1), and establishes "relations of cooperation with the Catholic Church and other confessions" (Art. 16.3). The state has established "co-operation agreements" with some religious denominations (Islam, Judaism and Evangelical Christianity).

Law 26/1992 of 10 November (1992) ([Ley 26/1992](#)), approving the State Cooperation Agreement with the Islamic Commission of Spain, establishes that "Islamic Communities belonging to the Islamic Commission of Spain are recognised as having the right to the concession of plots reserved for Islamic burials in municipal cemeteries, as well as the right to own Islamic cemeteries" (Art. 2.5).

Currently, the Autonomous Communities are the bodies that have competence in matters related to the implementation of agreements with religious denominations. Within each Autonomous Community, it is the local councils that have competence in the area of cemeteries. This means that they are being obliged to guarantee that burials in their cemeteries are carried out without discrimination of religion or any other grounds (Article 1 ([Ley 49/1978](#)) of 3 November; Article 2.b of the Organic Law on Religious Freedom ([Ley Orgánica 7/1980](#)). This is why the territorial associations and federations, Islamic in this case, choose to establish agreements within the Autonomous Community or the municipality in which they reside.

However, the Organic Law on Religious Freedom of 1980 imposes some limits, such as the protection of the rights of others in the exercise of their public freedoms and fundamental rights or the safeguarding of security and health (Article 3.1).

The application of the regulation may present some difficulties. These are mainly confined to three areas: that of health, that of availability of space in cemeteries and that of the "spatial arrangement" within cemeteries, given that the Muslim tradition advocates the separation of Muslim plots from non-Muslim plots.

### 5.1. Health

National and regional legislation establishes that burial in a coffin is compulsory, which is contrary to the traditional Muslim prescription of burial in contact with the ground. Only in the Autonomous Cities of Ceuta and Melilla, where the majority of the population is Muslim, did the regulations allow burial directly in the ground without a coffin. Lately this has been changing. Andalusia updated its Regulation on Mortuary Health Police in 2001 ([Decreto 95/2001](#), of 3 April) to accommodate religious specificities ([Morera and Tarrés 2013](#), p. 47), requiring the coffin to carry the corpse, but exempting it in the burial as long as it concerns persons whose cause of death does not represent a health risk (Art. 21.4). Shortly before the advent of the COVID-19 pandemic, Valencia, Castilla y León ([Núñez 2019](#); [Santiago 2019](#)) and Galicia ([Álvarez 2019](#)) joined this list of communities that allow coffinless burial. In any case, even before the pandemic, Muslims had already adapted to the regulations prohibiting burial without a coffin by placing soil inside the coffin to allow the corpse to be in contact with the earth. This was seen as "a formula of rapprochement of positions" ([Comisión Islámica de España 2019](#)). This formula became mandatory because of the COVID-19 pandemic, which forced a drastic change in funeral practices worldwide, affecting all religions, which made a great effort to adapt ([De León 2020](#)). The technical document "Procedure for the management of dead bodies of COVID-19 cases" published by the Spanish Ministry of Health on 26 May 2020, stated that any burial of a person who

died from COVID-19 should be in a coffin. In fact, the president of the Islamic Commission of Spain himself, Riay Tatary, and his wife, who died of COVID-19 in April 2020, were buried in coffins (Cadelo 2021).

## 5.2. Availability

According to the Observatorio Andalusi and Union of Islamic Communities of Spain, the Muslim population in Spain is, with all reservation, around 2,250,000 (Observatorio 2022a). For that population there are, according to a report by the Islamic Commission of Spain, two private Muslim cemeteries and thirty-five plots for Muslims in municipal cemeteries. (Comisión Islámica de España 2020), some of which have already reached their maximum capacity (Vega Medina 2023). On the other hand, the differences between Autonomous Communities are notable, while some still lack plots for Muslim burials (Observatorio 2022b, p. 16; 2022c, p. 27), others are increasing the number of burials (Comisión Asesora ADOS 2023).

Most cemeteries require the person to be registered as a local dweller in order to access their services. This makes it difficult to find alternatives for those who do not have space in their place of registration's cemetery. The lack of burial space affects people of all faiths and is one of the biggest challenges facing Spanish cemeteries today. On the other hand, the general tendency of all Spanish Autonomous Administrations is not to create private confessional cemeteries with public funds (Llaquet 2012, p. 79).

In these circumstances, repatriation of the body is still very common among Spanish Muslims, although those who were born in Spain generally choose to be buried in Spain. Repatriation is also very common in other European countries. For example, in the Netherlands the repatriation rate is approximately 90%, for France the rate is 80% and for Norway 40–50% (Ahaddour et al. 2017, 2019; Breemer 2021, p. 20; Kadrouch Outmany 2016, p. 104). The reasons for repatriation are varied, including funeral legislation, financial constraints, lack of knowledge of existing possibilities and a sense of belonging to the family and country of origin. Since the 1990s, Spanish Muslim communities have devoted more effort to ensuring the repatriation of their deceased than to obtaining reserved plots. After the COVID-19 pandemic, this situation has been reversed, forcing municipalities to seek urgent alternatives for the dignified burial of their Muslim fellow citizens (Moreras 2022, p. 79).

Therefore, the lack of burial sites is the biggest complaint voiced by Muslim communities (Comisión Islámica de España 2019; Consejo Consultivo de la Unión de Comunidades Islámicas de España 2014; Etxeberria et al. 2007, pp. 168–72; Europa Press Sociedad 2021; Salguero 2021). In any case, in relation to the availability of space for Muslim burials, the situation in Spain is similar to that in other European countries (Ahaddour and Broeckert 2017; Arab News 2020; Breemer 2021; Gilliat-Ray 2015; Savio 2020; Selby 2014). Despite this, the way in which each country deals with the issue is different depending on the agreements (or lack thereof) with the respective Muslim communities.

In this regard, the application of the above-mentioned legal principle of *maslahah mursalah* has proven to be somewhat effective. In a densely populated Muslim country such as Malaysia, multi-level construction was permitted in 2015 through a Fatwa., Particularly in the Federal Territory of Kuala Lumpur, a Fatwa was issued in 2018 recommending, in both rural villages and densely populated cities, the implementation of multi-level burials to maximise the use of cemeteries, with the condition of preserving the sanctity and honour of the dead (Haryati Ibrahim et al. 2022).

This example in a Muslim country reinforces the idea that in countries where Muslim communities are a minority, the principle of *maslahah mursalah* could be used to solve similar problems (Mawardi 2020). In this sense, although it is not specified that it be by application of the *maslahah mursalah*, in some cemeteries in Spain, such as those in Valencia and Mallorca, it has been decided to build Muslim burials in the ground, downwards, one on top of the other (Alba 2021). This shows that Muslim communities have made efforts to adapt to the new circumstances created by spatial problems (reduction of burial spaces) or

health problems (COVID-19 pandemic), which have forced them to modify some of their burial practices to some extent. In these adaptation efforts, concern for the common good beyond the religious beliefs of individuals has been fundamental.

### 5.3. Spatial Arrangement

Applying Edward W. Soja's concept of "Spatial Justice" (Soja 1996, 1997, 2000, 2010) to funerary spaces, one might wonder whether it would not also be possible to design in the near future an inclusive type of cemetery, which would not show great social differences or differences based on economic, ideological or religious motives. One might ask to what extent the parcelling of funerary spaces helps inclusivity or underlines exclusivity in a society that upholds the principle of equality.

From this perspective, if a society with multicultural ghettos is clearly not inclusive compared to one whose spaces are not separated but shared by members of the whole society, it is logical to think that something similar might not happen with the spaces shared by the deceased, or rather, by the living dedicated to the deceased. Cemeteries that are much partialised and clearly differentiated can generate the sensation of separation between the faithful and the unfaithful, "ours" and "the others".

However, the realisation of spatial justice can take various forms and the fact of separating plots in a cemetery on religious grounds can also be seen as an example of respect for diversity and as an attempt to integrate those first-generation Muslims, older people from Muslim countries, who generally opt for repatriation of corpses. Equally, it can be seen as a way of integrating those who were forced to migrate for political reasons and asylum claims, and who cannot return.

In any case, it seems prudent to avoid "severe segregation" so to establish distinctions between Muslim plots and the rest of the groupings the use of ornamental and vegetal elements is recommended (Moreras and Tarrés 2013, p. 43). Moreover, parcelling may, in the medium term, become meaningless if, as may happen, second- and third-generation Muslims adopt and assimilate majority practices, (Ansari 2007; Balkan 2018; Kapletek 2017). All of this is not incompatible with those proposals that posit the desirability of certain key principles for all cemetery systems: dignified disposition of the body of the deceased, democratic accountability, equal access to funeral services regardless of income, freedom of religious expression and environmental sustainability (Rugg 2022).

In any case, the three aspects presented (health, availability and spatial arrangement), although susceptible of being debated and dealt with from different angles, do not seem to pose serious problems of coexistence among citizens of different creeds.

## 6. Discussion

At the beginning of this article, we asked ourselves about the positive and problematic aspects of the Spanish model of secularism. We discuss here some issues related to this question; questions that the very development of this article has raised in its authors, and which remain open for future debates and work.

First. Spain's experience seems to prove Marramao right when he rejects the axiom of the incommensurability of cultures and proposes to highlight the meeting points between different positions (Marramao 1996). However, although it seems to have achieved a peaceful and respectful integration of religious plurality, the model of the Spanish state in its relationship with religious denominations is not easy to classify within the models pointed out by Berlinerblau, Stepan and Bhargava (separation, laïcité and accommodation). The Spanish state itself, departing from the Spanish Constitution and the agreements established with various confessions, including Muslims, defines this relationship as one of "cooperation". Perhaps it can therefore be framed within what could be called a "cooperation model". The very term "cooperation", at least in the Spanish language, seems more constructive and positive than "accommodation"; to cooperate implies "to work together with another or others to achieve a common goal" (Real Academia Española 2022a), while "accommodate" implies "to harmonise, to adjust to a norm, to conform..." (Real Academia

[Española 2022b](#)). This nuance has also been pointed out in some studies critical of the goodness of the model and the widespread use of the term accommodation ([Barras et al. 2018](#); [Solanes Corella 2017](#)).

Second. The organisation of the Spanish state combines hierarchical aspects (the constitutional umbrella and the exclusive competences of the state) with territorial de-centralisation (competences assumed by each Autonomous Community). The state's relationship with Islamic communities thus brings into contact a complex, hierarchical organisation with a multiplicity of communities that are not only not hierarchically organised but also often not even related. The state establishes an agreement with a single interlocutor (the Islamic Commission of Spain), which may make it difficult to reflect all the sensitivities of such a plural and heterogeneous group. Moreover, it is an agreement that is not the responsibility of the state administration to implement since competences in this area correspond to the Autonomous Communities and municipalities. This fact can make it difficult to implement agreements in the same way throughout the country. Paradoxically, however, this organisation brings local religious communities closer to the decision-making centres, enabling a more fluid dialogue between communities and the administration.

Given that there are different forms of state organisation, to what extent are the ways of relating to the different confessions conditioned by the centralisation or de-centralisation of the state, i.e., its territorial organisation? Although it seems to work in Spain, is de-centralisation always accompanied by an improvement in state–religious community relations?

Third. Spain has opted for a model of dialogue with the different religious denominations. This option for dialogue and cooperation has been accompanied by a positive attitude on the part of the different religions. In our case, Muslim communities have shown their willingness to adapt to new circumstances that have affected their burial practices (coffin burial and problems of burial space). This adaptation has been consistent with the legal tradition of the principle of *muslaha mursalah*, which, for the sake of the common good, makes it possible to deal with new situations not contemplated in the foundational texts of Islam. This reinforces the conviction that there can be common ground between secular values and religious beliefs. Simultaneously, it makes us rethink some of the criticism [Habermas \(2015\)](#) has regarding his proposal of “translation” of religious questions onto “secular” language. Be the translation language “secular” ([Habermas 2015](#)), “human rights” ([Martin 2013](#)) or “liberal-democracies principles” ([Bader 2017](#)), could it be possible to communicate among those that are different, in the absence of a minimal common language? In the language of [Garzón Valdés \(1997\)](#) and [Marramao \(1996\)](#), would communication be possible without an untouchable common place of the rootless?

Fourth. In spite of the above, one of the aspects that we consider potentially problematic is the fact that the only subject of the right to burial according to the Muslim rite are the Islamic communities integrated in the Islamic Commission of Spain. This could pose problems for Muslims belonging to a community that is not part of the Commission. Although it is not publicly stated, it would not be unreasonable to think that the internal plurality existing within Muslim groups could generate some conflicts. And not only within communities, but even concerning individuals who might wish to break with their religious tradition or simply change their burial practices without renouncing their faith. The need to respect the principles, values and objectives of a secular society ([Bhargava](#), [Garzón Valdés](#), [Martin](#), etc.) leads us to point out that any Muslim (or any believer of any denomination) should be able to choose the way he or she wishes to be treated when dying.

Fifth. The agreements established by the Spanish state, which are not established in other European countries in the region, despite providing guarantees, may raise doubts or objections as to the possibility of their generalisation and, therefore, their sustainability. In that sense, for example, should agreements be made with all religious denominations, or only with the most representative or established ones? Should the agreements be equal, or is it better not to make any agreements at all? On the other hand, and continuing in the field of limits, can the right that is recognised for a religious community be extended to an



individual who is not part of it? For example, if Muslims are allowed to be buried without a coffin, should any citizen not have the same right regardless of their beliefs?

Sixth. In addressing the diversity of funerary rituals that affect the management of shared public spaces, this article has underlined the importance of what authors such as Lefebvre and Soja have called “spatial justice”. Given the emotional and identity value that funeral rites have for the living, we understand that this concept is also important when rethinking the public space designed for the dead. If the shared space of the living must be fair and inclusive, should the shared space of the dead not be fair and inclusive as well?

## 7. Conclusions

As a first and general conclusion, it seems that there is not any major incompatibility between the Muslim funerary practices and the Spanish law, neither between those practices or the Spanish society.

On the contrary, despite the difficulties in its implementation due to the heterogeneity of the Muslim communities, the Spanish model to manage the religious phenomenon, which calls itself “cooperation”, shows that aside from the law, the attitude of the participating groups matters. It also shows that, practiced as dialogue secularism, there can be an opportunity for the integration of religious diversity, not a system of confrontation between the state and cultural or religious groups.

Regarding the funerary rites, the implementation of the Spanish state’s agreement with Muslim communities has encountered difficulties of various kinds, mainly those related to health and available space. However, none of these has led to serious problems of social coexistence. Part of these difficulties can be understood in the context of a wider issue of burial space, which is widespread throughout the country and for all persons and denominations.

Muslim communities have shown a capacity to adapt to these difficulties. Moreover, from its historical legal tradition we highlight the principle of *muslaha mursalah*, which has allowed Muslim communities throughout history to adapt to new situations, not specifically envisaged in the Qur’an or the *sunna*, while respecting the fundamental principles of Islam. This legislative adaptability in pursuit of the common good has also been effective in its treatment of certain funerary practices.

This shows that when the secular framework of the state is open, neutrally positive, and religious communities show adaptability in pursuit of the common good, integration and coexistence are possible.

**Author Contributions:** Conceptualization, J.L.D.L. and I.B.; writing—original draft preparation, J.L.D.L. and I.B. All authors have read and agreed to the published version of the manuscript.

**Funding:** This research received no external funding.

**Institutional Review Board Statement:** Not applicable.

**Informed Consent Statement:** Not applicable.

**Data Availability Statement:** Not applicable.

**Conflicts of Interest:** The authors declare no conflict of interest.

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