



RETHINKING THE PLACE OF RELIGION IN EUROPEAN SECULARIZED SOCIETIES: THE NEED FOR MORE OPEN SOCIETIES

Conclusions of the Research Project ReligioWest

“The (re)construction and formatting of religions in the West through courts, social practices, public discourse and transnational institutions”
(Project No: 269860)

Principal Investigator: Olivier Roy | Robert Schuman Centre for Advanced Studies
European University Institute

<http://www.eui.eu/Projects/ReligioWest/Home.aspx>



Funded by European Research Council
7th Framework Programme

Summary

The contemporary debate on Islam both hides and reveals a deeper debate on the meaning of religion in a secular Europe. In fact, the more or less conflictual relationship with Islam compels Europeans to make explicit what “European values” they “oppose” to Islam. And herein begins the problem: are these Western values secular or Christian first? There would be little problem if the secular values were merely a result of the secularization of religious norms, or were at least congruent with them. But this is no longer the case: the deep conflict that is dividing Europe between a secular majority and hardcore religious faith communities on abortion, same-sex marriage, bio-ethics, or gender issues shows that there is no longer a common moral ground for values. And even in the USA, where a majority of the population still claims to be religious, the ‘culture war’ ended, after the approval of same-sex marriage by the Supreme Court, representing a victory for new values that hard-core believers see as incompatible with their religious norms.

Of course, one could show that the Western conception of human rights derives from a Christian matrix. One can also stress that both the Catholic Church (through Thomas Aquinas’ concept of “natural law”) and the Kantian agnostic tradition did consider that moral values could be universal and could stand by themselves without depending upon faith or theology. However, as we saw, this continuity between Christianity and modern secularism is no longer based upon common values. The continuity, if such a thing may be said to exist, is now commonly expressed in terms of “identity”. However, the question remains as to how we should conceive of an “identity”, and specifically a “Christian identity”, based upon shared values, if not on a common faith? The reference to “Christian identity” instead of “Christianity” represents a means of “secularizing” Christianity, thereby excluding from the common values any specific religious value, norm or practice that could be seen as not being congruent with these dominant secular values (for instance differences in status between men and women, “pro-life” versus “pro-choice”, gay rights et cetera). However, the consequence is that any religious values or norms perceived as not being congruent with what we call European values, in a word anything that could be seen as purely religious, should be excluded from the public sphere. This trend represents a striking departure from the historically constructed mix of compromise and consensus that has shaped the relations between state, society and religion in Western countries since the end of the wars of religions. New tensions are thus rising that go far beyond the case of Islam. And because Europe cannot just revert to a previous stage where religion (in this case Christianity) was intimately linked with culture, it must rethink the place of religion in the public sphere and the definition of religious freedom, by accepting that a state of rights is not necessarily based upon a consensus on values.

THE DIVORCE BETWEEN RELIGION AND WESTERN SECULAR CULTURE

Religion, state and society: from a political conflict to a “culture war”

There are more tensions about religion in the West than there have been since the early XXth century. These tensions are not just a consequence of the arrival of new religions (notably Islam) or of a growing fundamentalist trend inside the existing religions (for example, evangelicalism, or salafism). They are, first of all, a consequence of a growing secularization of culture that goes beyond the political conflicts between Church and State which have regularly pitched the State against certain religions since the XVIIIth century (*gallicanisme*, josefism, *Kulturkampf*, *laïcité*, Italian unification): these conflicts were not about faith, values or even culture, they were about power, and more precisely the political power of the Catholic Church. All of these conflicts ended with some sort of a national pact, which varied in nature from one European country to another: separation (France, 1905 law, only accepted by the Catholic Church in 1924), a national Church (Greece, England, the Scandinavian countries), concordat (Italy with the Lateran agreements of 1927, Spain) or pillarization (recognition of specific faith communities by the State: Netherlands, Belgium, Germany). Nevertheless, these national compromises seem unable to deal with the present tensions concerning religion. It is not because politics have changed, it is because the relations between religions and societies have changed.

Tensions today are not about the political role of religions and churches (who have accepted the separation with the State), but about the sharing of a common set of values and norms. It is a cultural gap, not a political one. Religious communities of all faiths tend today to feel alienated from the dominant Western culture, which stresses the absolute freedom of the human being (pro-choice, gay rights, sexual freedom, feminism, gender versus biological sex, surrogate motherhood, freedom of expression, human rights versus divine law etc.). The divorce, both in Europe from the Catholic Church and in the USA from the “Christian right”, started in the 1960s. In a move which then appeared as paradoxical, Pope Paul VI wrote “*Humanae Vitae*” (an encyclical letter banning contraception) in the aftermath of the second Vatican Council, which seemed to have reconciled Catholic theology with modernity. “*Humanae Vitae*” put sexual morals at the core of the preoccupations of the Church. Both in Europe and the USA, contraception and abortion became the central issue of an ongoing assault, by the assorted churches, on the new secular modernity. Both US protestant churches and the Catholic Church fought legal and political battles to ban abortion and limit sexual freedom. These tensions culminated in the lost battle on same-sex marriage. As the French cardinal Barbarin stated, the recognition of same-sex marriage means a real anthropological change, far beyond the issue of following “God’s norms”. **There is no longer a natural law common to believers and non-believers.**

The grey zone and bridges between believers and non-believers are disappearing. “Nominal” Christian Catholics depart more and more from the moral teachings of the Church and leave the Church to the conservative faithful, while in contrast, “liberal” Protestants push their churches to adapt to the new values, to the dismay of the evangelical *born-again*s, whose influence is rising. In every religion, there is a growing split between a hard core of believers (mostly conservative or *born-again*) and secularized nominal members of the denomination, who feel less and less in tune with the former and far closer to avowed secularists or atheists. In reaction, faith communities tend to tighten the conditions for “belonging”: you need to be a *born-again* to belong to an evangelical church, while, in the Catholic Church, the traditional territorial parishes tend to be replaced by non-territorial communities, whose members share a common form of religiosity.

Moreover, this “culture war” has spilled over into politics, where issues of values, norms and identities supersede the traditional debates on economics and institutions, leading to a weakening of the traditional left/right cleavage in favor of new populist movements, which focus on issues like identity, immigration and Islam.

In fact, an explanation for this new conspicuousness of religions is that religions are more and more disconnected with the culture with which they were previously associated. The different

fundamentalisms are not the expression of traditional cultures that are resisting modernization; on the contrary, they are a product and an agent of the crisis of traditional cultures. Salafism in Islam is primarily a will to eradicate traditional Muslim cultures in favor of a set of explicit norms that could be implemented in any context, and thus could be globalized easily (under the name of an abstract *sharia* that never existed as a real State Law). **This explains why the contemporary forms of religious revival are fundamentalist and not liberal.** A young European salafi should reject the cultural Islam of his parents and claim to follow a “true Islam”, which is not associated with any culture: it is a normative code that must be implemented from scratch and is often associated with violence, because in fact it does not exist as such in any society. **The problem of Islam in Europe is not the resilience of an “Oriental” culture, which fades away with the first generations, but the reconstruction of a de-culturated normative “pure” religion by a youth in search of a cause.**

The recent wave of refugees coming from Syria has exacerbated the debate, which now exists at two levels, namely external (“European” values versus “Islamic values”) and internal (what are the European values?). The first debate makes the headlines, but obscures the second, which is far less publicized, except by the Catholic Church (is the West firstly secular or firstly Christian, knowing that both sets of values are radically diverging?). **We could reformulate the debate: is there a clash between cultures, each of which is based upon a specific religion, or is there a clash between modern values and religious norms, whatever the religion?**

The debate is not limited to academics or politicians. It pervades the public space and is almost expressed in the same terms in the different spheres, thanks to the growing role of the “essayists”, like Zemmour, Finkelkraut, Sarrazin, Fallaci, and Hirschi Ali, who connect the different levels and fuel the argumentation within the debate. There is an interesting convergence of usually separated levels of debate: philosophical (Habermas, Gauchet, Taylor, Walzer, Manent, Brague...), legal (freedom of religion versus Human rights) and political (the debate on integration, immigration and identity, spurred by the rise of populist movements), while journalists amplify the public debate more than they shape it. In this sense, there is clearly a common public debate throughout Europe¹.

There is no return of religion....

We start from a fact: European societies are highly secularized. This is true at all levels: legal (law confines religion to a specific space), constitutional (separation), cultural (new values) and sociological (decline of religious practice, secularization of the public space and of education, transfer of “care” to State or private institutions). All of the great religions have experienced a decrease in clerical vocations, which has not been compensated by the rise of the new religions or new forms of religiosity (charismatic Catholicism for instance). **Secularism has won.** Even the exceptions confirm the rule (the presence of State churches in the UK and Denmark does not prevent these two countries from having one of the lowest levels of religious practice in Europe; Catholicism is the dominant culture in Italy, but has lost ground in the recent years).

Nevertheless, religion seems more visible than fifty years ago. The reason is not an increase in practices, but an increase in visibility. There is no “return of the sacred” because there is no return to a previous situation, but a reconfiguration of the relationship between society and religion. Religions have lost their social evidence, they are no longer part of the daily social landscape; religious signs in public spaces appear as “weird” because they are unfamiliar or are perceived as too conspicuous to be innocent. This is true for a nun in full garb, a priest in black cassock, a Lubavitch with full attire or a Muslim woman in burqa. In many cases, these religious signs are themselves not traditional but a reconstruction dating back to a more (burqa) or less (Lubavitch attire) recent innovation.

This externalization of religion from daily life is acknowledged by the faith communities themselves, which confront the secular society on key societal issues (abortion, same-sex marriage) and ask for consciousness exemptions precisely because they do not share the secular values: **they claim “religious**

¹ Nadia Marzouki, Duncan McDonnell and Olivier Roy, *Saving the People, how populist parties hijack religion*, Hurst, 2015, forthcoming

liberty” (meaning defending the privileges of the Church) versus “religious freedom” (meaning the individual right to believe and practice or not). As we saw, the debate is concentrated on the key issue of the nature of marriage, of gender and procreation, because this is at the core of the cultural conception of what a society is². While faith communities want to be “listened to” on societal issues (pro-life or pro-choice), secular society prefers to consider faith as a private issue and not to accept religious values as being part of the public debate.

We thus have a double movement of “externalization”: removing religious signs from the public sphere and making faith private.

Of course, the debate on religion in the public sphere targets Islam first and foremost. The Swiss campaign against the minarets presented them as literally being in contradiction with the Swiss physical landscape. However, even if the ban aims first at Islamic religious signs, it has an incidental effect: the defense of “Christian signs” is not undertaken in the name of defending a faith (precisely because the secular society wants to make it private), but of defending a “Christian identity” that is cultural and not linked with faith. **In a word, the campaign against Islam contributes to the secularization of Christianity.**

...but a closing of the European mind on “identity”

Mentioning the “Christian roots of Europe” was not an issue for the founding fathers of the EU (Robert Schuman, Jean Monnet, De Gasperi and others), although they were more often than not practicing Christians, probably because, on important societal issues (family, gender) there was little discrepancy between a religious-inspired and a secular worldview³. Fifty years after, in 2005, the religious identity of Europe became an issue with the debate on the reference to Europe’s “Christian roots” in the preamble of the European Constitution. **If the Christian identity of Europe has become an issue, it is precisely because Christianity as faith and practices faded away in favor of a cultural marker which is more and more turning into a neo-ethnic marker** (“true” Europeans versus “migrants”). This Christian identity is put forward more to define the “others” (Muslim migrants, Turkey) than to promote a set of explicit values (precisely because of the gap between secular and religious values). The debate has largely been imposed by the rise of populist movements.

Religion is seen, both by populist groups and by the multi-culturalist left, as an identity marker, more cultural than strictly religious. Public polemics turn around the visibility of religious signs in public spaces (veils, minarets, crucifixes), more often associated with an identity than with a true religious practice. The term “Muslims” is now superseding the ethnic-national terms used to designate minorities brought by immigration (In GB one has shifted from “Pakistanis” to “Asians” and now to “Muslims”, in France “*musulmans*” has replaced the former terms of “*Maghrébins*” “*immigrés*” and “*Arabes*”). The term “islamophobia” embodies this confusion between religion and ethnicity. This ambivalence between identity and religious norms also pervades leftist anti-racist movements that advocate multi-culturalism: they might clash with Muslim religious groups on the issue of the status of women, while accusing the West of imposing its own cultural norms on migrants.

The populist movements are nevertheless ambivalent on the issue of “Christian identity”: they all reject Islam as “non-European”, but some of them fight for a re-Christianization of our societies (the Polish PiS, the US Tea Party), while others defend a Christian identity without faith (the LegaNord in Italy, the FPÖ in Austria), while still others endorse contemporary secular values (Geert Wilders in Netherlands). In France, the National Front is split: Marine Le Pen defends “*laïcité*” as the root of the French identity, while her niece, Marion Maréchal Le Pen, promotes an old view of France with churches, processions and a ban on abortion. However, generally speaking, when populists promote Christianity, it is in the form of a “folkloric” popular religion, using the cross as a political symbol, but

² See workshop on “Love, nature and marriage in the West, between law and religion”, EUI, 13 May 2013, and: Jeanette Bennion and Danièle Hervieu-Léger, *The meanings of marriage in the West: law, religion and ‘nature’* EUI working papers RSCAS 2014/38

³ See workshop on “Rethinking European Christian Democracy”, EUI, 10-11 April 2014

ignoring the teaching of the Church, and often fighting against the clerical authorities (the LegaNord in Italy vocally attacked the Archbishop of Milano, Mgr Tettamanzi, who called for the provision of hospitality to migrants and refugees). The populists are not known for their attendance at Sunday masses. In fact, Christian identity may run against Christianity as a religion on issues like violence, xenophobia and racism (as epitomized by Breivik, Stracher, and the Lega Nord, all of whom have been rebuked by the churches concerning their xenophobia), a fact regularly stressed by Pope Francis.

The Catholic Church is also ambivalent on the issue of European identity. It opposes the populists on “Christian values”, but shares with them the will to stress the Christian identity of Europe, while giving a different definition of its values.

The myth of “judeo-christianism”

Incidentally, the focus on “Christianity versus Islam” has also had an interesting impact on the status of Judaism⁴. **The story of a “Judeo-Christian” Europe, as opposed to Islam, misses two points: Judaism was itself kept on the margins of European societies and culture by the Catholic Church until the XIXth century**, either through the institution of the “ghetto” (whether physical or cultural) or by vigorously chasing any form of Jewish practices that could have been kept by converts or pseudo converts. What might be a “Jewish” legacy inside Christianity has been “Christianized” by the Church. It is secularism, not Christianity, that has belatedly (XIXth century) brought Judaism into the public sphere, and not without opposition and backlash (via antisemitism). More importantly, **Jewish religious demands regarding public spaces are closer to those of Muslims** (specific diet, ritual slaughtering, ostensible signs of piety, circumcision etc.). The recent “enrolment” of Judaism on the side of Christianity is more political than religious, and often revolves around taking sides in the Israel-Palestine conflict, or around opposing Muslim immigration.

We can conclude that the use of the terms “Christian Europe” “Judeo-Christian Europe” or “European values” is very problematic. The rise of the populist parties, who ostensibly distance themselves from many of the liberal European values, and the growing opposition of faith communities, including Christians and Jews, to the hegemony of secular values, which are ever more “liberal”, leads to the question as to whether we can exclude these illiberal groups from the club of “European values”?

⁴ Conference organized by RW: The Jewish Revival in Europe and North America: Between Lifestyle Judaism and Institutional Renaissance, EUI, 5 - 6 June 2013

WHAT ARE THE EUROPEAN VALUES: THE VAIN QUEST FOR A “COMMON GOOD”

Although Islam is the most controversial issue, the debate begins with the status of Christianity. The controversy on Islam entails the need to re-assess the connection between Europe (or the USA) and Christianity, and to make explicit what we call “European values”, at the risk of finding that there is no consensus on the issue.

Whatever the intellectual genealogy of secularism, there is such a gap nowadays between religious and secular values that there is no “common Good”. Salvation is central to the modern charismatic forms of religiosity; the thriving faith communities tend to concentrate on living a fully religious life and discard the “privatization” of faith advocated by secularists, even if it pushes them to constitute more or less closed communities (monasteries, Haredi or salafi neighborhoods). As John Rawls and Charles Taylor explained, there is no longer a consensus on the “common Good” and the issue is to accommodate in the same political society people who have a different and even antagonist agenda on norms and values.

Sharing a common public space between believers and secular citizens

The gap is such between the “sacred” norms, which are considered as non-negotiable by believers, and secular values, that there is a need to find a new compromise that would go beyond the different “national” settlements that have thus far regulated the place of religion in the public sphere. It is no longer an issue of state/church but of society/religion relations⁵.

The problem has been dealt with by philosophers (Rawls, Taylor, and Habermas) who proposed different solutions. The best known is **Taylor’s theory of “reasonable accommodation”**. Secularists should accept religious signs and practices that do not mean anything for them and that do not impinge, or only do so to a very small degree, on their secular way of life, while religious communities should not try to impose their norms on the secular society. In a word, I can accept to recognize that a norm which is contingent for me is essential for the other (for instance, blasphemy). Both sides must make concessions. However, in practice, such a model does not work easily. The Danish cartoons and Charlie Hebdo affairs show that many secularists are not ready to limit their own freedom of expression as a sign of respect for religious people. When the Lubavitch community of Montréal asked for the right to put an *eruv* (a very thin white thread) three meters above the ground around the neighborhood to make it accessible for believers during Shabbat, the local municipality refused. When the French Quick fast food chain decided to sell only *halal* meat in some of its restaurants, it triggered uproar among secularists. In both cases, the opposition came from the refusal of some secularists to live or eat under a “religious sign” even if it was meaningless for them. It shows that religion in fact is never without meaning for unbelievers.

Habermas proposed another compromise: the religious communities should “translate” their religious norms into values that could be rationally debated in the public sphere. In a sense, many religious groups anticipated this advice: the Christian opposition to abortion was not framed under a religious paradigm (“Thou shall not kill”), but under a larger concept of protecting the right to life (Pro-Life). Opposition to gay marriage is expressed in anthropological or biological terms. In German schools, religion is taught as ethics and not as theology. In a sense Habermas proposes to “desacralize” religion. In fact, this is exactly what the Christian democracy did. However the demise of Christian democracy shows that the Catholic Church, under Jean Paul II, was eager to “show the cross” again instead of diluting its norms in some sort of secular ethics. The religious revival which started in the 1960s in Protestant America, and then in the late 1970s in Catholic Europe is precisely a backlash against the secularization of religion promoted by liberal Christians.

⁵ Nadia Marzouki and Olivier Roy (ed), *Negotiating the non Negotiable*, EUI E-book, 2016.

To sum up, in a secular society, religious communities are confronted with a choice between three options:

- 1) **To withdraw** into the private sphere for individuals, or to the “ghetto” for communities (Amish, Lubavitch),
- 2) **To acknowledge the divorce** and to claim, for mainstream churches, “clerical exemptions” and “consciousness objection”,
- 3) **to reformulate religious norms** in a way that is acceptable by the secular rationality, in a word, to “reform” religion (a constant call addressed to Islam, but also to the Catholic Church).

The first option is what French *laïcité* requests. The second is a defensive reaction from faith communities that turns religious freedom into freedom of the Church (religious liberty), or from any specific community requesting the right to be different. The third option is probably the most popular in terms of public opinion, because it explicitly requests religions to reform themselves in order to be in accordance with secular values. Incidentally, this call for reform is implicit in the support provided by secular media to Pope Francis (“will he be able to reform the Church?”), and is very explicit when it comes to Islam. However, the translation did not work better than the reasonable accommodation. The Catholic Church and the Evangelicals, despite their use of secular arguments to reject abortion and same-sex-marriage, found little support among secularists, and are still battling accusations of misogyny and homophobia.

Newspapers are full of editorials from secularist and even atheist intellectuals (many of them with a Muslim background when it concerns Islam) calling for a religious reformation, implicitly establishing Protestantism as *the* real Western religion (there is no call for the reformation of Protestantism). For the most open of these intellectuals, the second Vatican Council represented a discreet but real protestantisation of Catholicism (a view shared by many Catholic traditionalists who of course reject such a move). Now, they turn their eyes to Islam, without taking into consideration the fact that no religion could be reformed from outside and that no secular state could work at religious reformation without contradicting its own secularism. Moreover, in every religion, the religious revival we are witnessing today is never “liberal”. On the contrary, it is always associated with conservative and even fundamentalist views. There is almost an authoritarian dimension in this call for reformation: **the more Europe asks religions to become “liberal”, the less Europe is keeping in line with its supposed “congenital” liberalism.** To make things worse, the more European secularists ask Islam to adjust to liberal democratic values, the more these liberal and democratic values are challenged by populist movements: in fact the populists promote illiberal values, like **the defence of national and/or Christian identities as opposed to equality between citizens and separation of Church and State.**

The call for religious reformation sounds both irrelevant and contradictory.

What are European values?

As a matter of fact, the “European values” referred to after World War 2 have never been, as we saw with the founding fathers of Europe, associated with Christianity as such, but were based upon three pillars: political liberalism, human rights and, less explicitly, welfare state policy. The historical role of the European Christian democracy has been to relocate Christian values and the social doctrine of the Church within this new paradigm (let’s not forget that some social-democratic parties also have a Christian component –see the Christian roots of many British Labour leaders and many German SPD leaders).

The problem with defining present European values is that two of these pillars (namely political liberalism and the welfare state) are in crisis. We will not delve into the crisis of the welfare state and the effect of the hegemony of liberal economic conceptions on the social fabric of the European societies here, but these changes led to the demise of both Christian democracy and traditional social democracy in most European countries, in favour of a “new left” (open to social changes but pro-market), and a new right, which does not give a damn about Christian values (even if it occasionally promotes “Christian identity” as a purely negative, anti-Islamic identity).

Human rights are left as the only consistent trademark of the West. Respecting them is a *sine qua non* condition for accession to the EU. Human rights are by definition framed as “secular”, that is, independent from any religious norms, Christian or not. In a sense they constitute the “European identity” or even the European ideology. They were initially established in opposition to totalitarian ideologies, but since the 1980s, they are advocated to “tame” religious norms perceived as being in opposition to them (women’s status, freedom of speech versus blasphemy, et cetera). There is a philosophical debate on the origin of human rights (is it Roman law, Christianity or the Enlightenment?), while Pope Benedict XVI never hesitated to question their “sacralisation”, which puts Man in the place of God⁶. Consequently, secular human rights are regularly opposed to religious norms, a fact that seems to imply that religions per se are alien to the concept of human rights (even if they develop a rather different concept of human *dignity*).

However, amongst the human rights, there is “freedom of religion” too.

The contradiction is that freedom of religion is both defined as a human right and as a potential threat to human rights. Besides the fact that, as stated above, many Europeans do not accept the absolute nature of human rights, beginning with the Catholic Church, the debate on the veil, circumcision, ritual slaughter, public religious practices, gender inequality, et cetera is framed alternatively as a conflict of rights (rights are all based on the same value, individual freedom, but should be put on a hierarchical scale) or as a conflict of values (rights are antagonistic because they are based on opposed set of values, for instance feminism versus patriarchalism). In the first case, religious practices are part of mainstream society. In the second case, many believers would simply be banned from exercising their religious practices openly. There is a questionable tendency in Europe to bestow rights only upon those with whom one agrees on values. Such a trend tends to exclude faith communities that by definition cannot accept secular values as a whole. The priority for maintaining a true freedom of religion is to make a clear distinction between rights and values.

Freedom of religion and “conflicts of rights”

Amongst the universally accepted rights, there is “Freedom of religion”, which is different from freedom of belief, because it implies a set of practices that may not just been private and personal: to circumcise one’s own son is not just a belief, it is a practice affecting another person who is not the believer. It means a right to perpetuate a tradition beyond the individual freedom of the child. Freedom of religion implies a “collective”; it is never defined by courts as merely constituting a “personal opinion”: courts used to dismiss people who advocated a “religion of myself”⁷.

However, recent trials and tensions show that when religious freedom clashes with other rights, it might be dismissed either as a less fundamental right (thus establishing a hierarchy of rights) or as contradicting the core values of the society. A Frankfurt court stated in 2012 that circumcision contradicts a child’s rights. Denmark has banned ritual slaughter (*kasher* and *halal*) in the name of animal’s rights. Veil and burqa often come under attack in the name of women’s rights. Traditional “clerical exemptions” that allowed the Church to maintain confidentiality (for instance, the secret of confession) are being challenged after recent scandals (pedophilia, for instance). While freedom of expression, a central human right, might be limited by law (defamation, racism), it is not limited when offending religion (see the Danish cartoons affair).

The issue is not here just to settle the scope of diverse although equal rights, but on the contrary to define priorities and dominant values. The fact that animal rights could supersede freedom of religious practice is an indicator of a huge change in worldview: it would not have made sense 50 years ago. **So beyond the “conflict of rights” looms a hierarchy of values.**

⁶ Olivier Roy, Pasquale Annicchino, *Human Rights between Religions, Cultures, and Universality*, in *The Cultural Dimension of Human Rights* / edited by Ana Filipa Vrdoljak, Oxford University Press, 2013-

⁷ See Mark L. Movsesian “*Defining Religion in American Law: Psychic Sophie and the Rise of the Nones*” http://cadmus.eui.eu/bitstream/handle/1814/30018/RSCAS_2014_19rev.pdf?sequence=1&isAllowed=y

Conflict of values: from “rights” to identity

More and more court decisions (including the European Court of Human Rights), instead of prioritizing religious freedom, state that this freedom does not mean equality between religions because of the presence of a “dominant culture” which is more or less a product of a given religion, that is, Christianity in the case of Europe. This notion of “dominant culture” is a recent paradigm that de-universalizes the concept of human rights.

Human rights are by definition the rights of supposedly equal individuals. **However, if the liberal conception of politics is still the dominant political “language” in Europe, both a rising political discourse (not only among populists) and an uneven evolution of courts’ jurisprudence tend to assert a “collective” identity above individual freedom.** The European Court of Human Rights has supported the exhibition of crucifixes in Italian classrooms, by defining the crucifix not as a religious symbol *per se* but as an expression of Italian national culture. Similarly the European Court of Human Rights has condoned the ban on the burqa in France in the name of defending a French form of “*vivre ensemble*”, defined as French political culture. The court did not condemn Switzerland for banning the veil while not banning the Christian symbols worn by other schoolteachers, a decision also taken by some German courts. In France “laïcité” is increasingly presented as the national ideology and not merely as a set of rules regulating religious practices in the public space. **Even liberal states tend to refer to “national culture” as a set of values** (see the questionnaires for would-be migrants established in Germany, the Netherlands and Belgium for instance, or the constant reference to “British”, “Western” or “European” values in the debate), although some citizens would not endorse these “national” values, in the name of their own religious beliefs (for instance gay-rights and nudity). *Tout le monde n’est pas Charlie* (“Everybody is not Charlie”).

How to accept the specificity of the “religious sphere”?

This confusion between rights and values, which means that the beneficiary of a right (here religious freedom) has the obligation to endorse the values that go with it, runs precisely against the very notion of religious freedom. Moreover, the problem is that, in essentializing the values and associating them with a given culture, one misses the universality of human rights. In a word, there is a contradiction between defining human rights as universal and branding them as purely Western.

Another issue is that by identifying values with a given culture, one misses that a religion is a faith, a choice and not just the passive submission to internalized cultural norms; this is especially true when religions are no more, as we saw, embedded in national cultures. Freedom of religion is in danger not because there are limitations to it (there should be limitations) but because the very practice of religion in public space is increasingly seen in Europe as “weird” at best and fanatical at worst. **Religion as practice and faith is no longer part of the European culture. Religion as sheer culture and identity comes to contradict religion as faith: this is visible in the use of religion as identity by populist parties as well as by progressive multi-culturalists.**

In order to deal with tensions associated with religious practices, we should disentangle the relationship between rights and values. Rights are defined by the Universal Declaration of Human Rights, they are individual, protected by law, regulated by courts and do not entail specific values. **For instance Freedom of Religion should not be connected with the “correctness” of religious dogma. Faith communities may apply to themselves norms that don’t make sense for non-believers** (*halal*, *kasher*, male circumcision) as long as they do not contradict the rights of others, outside the religious sphere, or do not veer into criminal practices (female circumcision).

Values are often referred to a common collective “culture”. However, **no culture is a closed set of values**; only sub-groups (political parties, faith communities, or professional corporations) might share the same system of values. Any society is based on conflicts, tensions and debates. No society is based on a consensus, or more precisely, the rejection of the consensus does not exclude the individual from the society. There is a right to reject same-sex marriage, to contest laws on bio-ethics, et cetera. What makes a society is not consensus, but the way the society has been framed by tensions and even civil

war: it is a shared history, but one of conflicts, not consensus. It is why for instance, the relationship between religion and society has been shaped in Western Europe by the Peace of Westphalia (*cuius regio, eius religio*), which is not a consensus on values but a compromise in order to end a greater evil: the wars of religion. Multi-confessionalism in Germany and Switzerland, laïcité in France, established churches in England and the Scandinavian countries, and pillarization in the Netherlands are a consequence of, and an answer to these conflicts. The problem is that the trend is now to turn these national “cultures” into clearly defined and essentialised sets of values, which they are not. The danger from this “essentialisation” of national cultures is two-fold:

Folklorisation: to reduce this culture to caricatural traits (“apéritif saucisson-vin” in France, acceptance of nudity as a German value).

Ideologisation: to think that national culture can be summed up into a coherent and totalizing system, for instance laïcité as a set of values, which in the end contradicts itself (the best example: laïcité is defined as “tolérance” when it precisely turns into a tool for expelling religion from the public space, a typical “newspeak” Orwellian way of talking).

It is not possible to reduce religious norms to the private sphere, because that would entail expelling religion from the public sphere and hence forbidding religious practices. Religious norms are not negotiable for the believers, but should not be imposed on the non-believers. **Secularists should accept the idea that there is a “religious sphere” that does not follow and may contradict the secular values and even the “national culture”, but whose members are also part of the polity.** This “religious sphere” should not be constructed as a counter-alternative society (as it is sometimes the case with Islamist groups or ultra-orthodox Jews), but as a faith community aimed at salvation and devotion. **No territory, no specific status, but a “virtual world”, that religious people call “sacred”.** One should not forget that, besides the Christian militants who campaign for banning abortion, many quietist “true” believers see the religious sphere precisely as purely spiritual and refuse to go to the streets to impose any religious norms on non-believers. **The religious sphere should no longer battle to “replace” the public space with a religious one, but secularism should accept that there is, somewhere, a religious sphere with which it should not meddle.** The Catholic Church typically constitutes such a “religious sphere”, which does not follow the dominant norms and values (democracy and feminism, to mention just two issues) and could not be construed into appointing female priests. The real condition for true religious freedom in a true democratic society is NOT to construct the norms of this society as a culture, but as a system of rights. Let us leave the concept of culture to anthropologists and writers.

We should “secularize secularism” (Etienne Balibar) in order not to transform it into a religion, ideology or culture.

The need for a new approach towards religion.

The objective is to conciliate the modern set of human rights with the freedom of religion. **We should give up any holistic approach that would define the right to belong (citizenship) by an obligation to conform to a closed set of norms and values (national culture).** The basic point of a modern democracy is that the rule of the majority is precisely limited by some sort of “bill of rights”, by Human Rights, in order to protect dissenters and minorities. This is the difference between liberal and illiberal democracies, where the latter consider that the majority has a right to impose its values; this illiberal conception of democracy tends nowadays to make inroads in Europe, either in the name of religion (Poland, Hungary), or of laïcité (France). To re-assess what a liberal democracy is means that we have to follow a multi-level approach.

1) defending freedom of religion as a specific freedom

In the universal Declaration of Human Rights, religion is always diluted and associated with other notions (freedom of thought *and* beliefs; no discrimination according to race, gender *and* religion).

Religion is defined as an opinion and an identity, amongst others. However, religion is far more than that: it is also a set of practices and non-negotiable norms associated with a stable community of faith and a transmitted tradition. Freedom of religion is not just an individual right, but the recognition that there is a “religious sphere”.

2) maintaining the separation of Church and State

The separation protects the State from the Church, but it also prevents secular states from interfering with theology. We should drop the permanent advocacy for religious reforms. Let’s not forget that, contrary to the dominant *doxa*, a reformer is not necessarily a liberal (were Luther and Calvin liberal, feminist, philo-semite and democrats?). A theological reformation might arise only from inside a given religion through the evolution of the interaction of its members and the surrounding society, but is not a prerequisite for living in a secular democracy.

3) Understanding religion as an autonomous sphere

A clear distinction should be made between culture and religion, even if they are historically closely associated. We should avoid dissolving religion into culture or traditions, especially at a time when globalization tends to autonomize religions from their respective historical cultural bedrocks. We should not approach religion through the lens of multi-culturalism, either positively or negatively. Cultural values and habits are transient and malleable, but religious dogmas are relatively stable and refer to something that is explicitly sacred for the believers (the religious sphere). The practice of the courts acknowledges this: ritual slaughtering or circumcision could be defended only as a religious right not as a cultural taste or custom.

4) Looking at human rights as truly universal, rather than European

Human rights are not a specificity of European culture: European culture has produced many other political ideologies, and the Arab spring showed that many Muslims would readily endorse them. The rise of populism shows that human rights are not genetically European. They are a recent construction, fragile, often contradictory, difficult to implement in a systematic way. They are not a legacy of the past, but a project for the future.