

religion and democracy in contemporary europe

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SILVIO FERRARI

State regulation of religion in the European democracies: the decline of the old pattern

The passage from religious pluralism to cultural and ethical pluralism

Europe is in the middle of a process of transformation which can be defined as the passage from religious pluralism to a cultural and ethical pluralism which is often characterized by a strong religious foundation. As a result of this transformation, the traditional systems of relations between states and religions no longer work smoothly and, after a period of relative stability, have entered a phase of transition. The direction of this change is clear enough, but it is hard to be so precise about its likely outcome.

Religious pluralism is a well-known fact in Europe. For centuries Europe has been split up into Catholic, Protestant and Orthodox communities, with dividing lines which frequently cut across the same town or the same region. But this pluralism was contained within a shared horizon, defined by reference to the same sacred books (Old and New Testaments) and the same interpretative corpus (Patristic). Of course, Jewish and Muslim communities have been living in Europe for a long time, but the Jews were faced quite early on with the choice between assimilation and persecution (and they chose the first, without avoiding the second), and the Muslims were confined to a peripheral region of Europe after the Catholic *reconquista* of Spain in the 15th century. As a consequence, religious pluralism in Europe has predominantly been intra-Christian pluralism and the religious conflicts that divided Europe after the Great Schism and above all after the Protestant Reformation did not create insuperable cultural divisions. It is true that the relations between man and woman, citizen and state, state and religion were (and partly still are) conceived in different ways in Catholic,

Orthodox and Protestant countries, but this difference did not become so great as to generate incompatibility and to prevent mutual understanding. The unification process of Europe, for all its shortcomings, is proof that a shared notion of citizenship exists.

These common links have become progressively weaker. Two factors – the first internal and the second external to Europe – have played an important role in this weakening process and have paved the way for the birth of a culturally and ethically pluralistic society.

The first factor is immigration, which brought into Europe a growing number of people who did not know and did not share certain central features of the European cultural heritage.¹ The way political or family relations are conceived or, on a more mundane level, the way people dress or what they eat mark a difference between members of these immigrant groups and the majority of Europeans. It is not only a difference of religion, but something larger that concerns lifestyles, beliefs, values, behaviour, etc: in a nutshell, a cultural difference.

Second, there is individualism, which questions assumptions that used to be taken for granted.² Secularization had already weakened the control historical churches exercised over the central passages of human life – birth, marriage, death and so on; now the way these experiences are conceived and lived is in the process of changing. The range of possibilities has become far greater and the individual is in a position to make choices that were inconceivable only a few years ago. Europe is moving towards a situation in which different ways of procreating, marrying and dying that correspond to the different ethical views of individuals exist side by side and enjoy the same legal legitimacy. The debate on bioethics all over Europe and the recent reform of family law in a number of European countries show that the historic churches have largely lost their capacity to lead the public debate on central ethical issues and to influence the corresponding political decisions (although there are exceptions – I am thinking here of Italy – which should not be overlooked).

What I have said confirms that today we are faced with something more than simple religious pluralism. We have to deal with what is truly a cultural and ethical pluralism. But to understand this new challenge properly, we need to consider its most interesting feature. This cultural and ethical pluralism is by no means a result of the dissolution of the religious dimension in contemporary society; on the contrary, it is frequently characterized by a strong religious connotation or at least takes place in a context still dominated by the '*revanche de Dieu*'.³ On the one hand, the decline of the historical churches' power to speak on behalf of the whole of European society has been balanced by the development, within these same churches, of new groups and movements, such as the Pente-

costals and the 'born-again' Christians in the Protestant field and Communion and Liberation and Opus Dei in the Catholic one. All of these are motivated by a desire to give expression to their strong religious identity in all fields of human life and, consequently, they want to affirm the religious foundation of ethical, cultural and political choices. On the other hand, the distinction between religion, ethics, culture and politics which had been accepted – willingly or unwillingly – by most Christian churches is not part and parcel of the heritage of many religious communities which have arrived in Europe in the last 40 years, starting with Islam and some of the new religious movements. As a result, cultural and ethical choices are frequently justified through a direct appeal to religion. The issue of the Islamic headscarf is a good example: what had been regarded, until a few years ago, as an ethnic custom is now perceived primarily as a religious expression. And there are equally clear examples in the Catholic field. In Italy the distinction between religion and politics is much weaker now than when the Christian Democratic Party ruled the country. At that time providing Italian political life with a Christian orientation was the task of laymen engaged in politics; after the break-up of the Christian Democratic Party, the same task was taken up by the bishops, who did not hesitate to give very precise and stringent political instructions regarding the referendum on artificial insemination and registered partnerships.

The final outcome of this blending of religion, culture, ethics and politics has been that negotiation and compromise are much more difficult today than in the past. When ethical and cultural choices are directly connected to the will of God, they tend to become non-negotiable.

The legal impact of the transformation

What are the legal consequences of this transformation of the European religious landscape? What is its impact on the systems of relations between states and religions? Today the traditional legal mechanisms that regulate the various aspects of human activity do not seem to work properly. Confronted with a pluralism which is at the same time cultural, ethical and religious, such mechanisms have difficulty in facilitating freedom for social communities without falling into the anarchy of particularisms. This difficulty can be explained by remembering how these mechanisms came into being. They started taking shape as a way of putting an end to the wars of religion of the 16th and 17th centuries. The central question then was how to make it possible for subjects with different religious faiths to coexist in the same country. The issue was religious pluralism, not cultural and ethical, and the problems it raised could be solved by neutralizing the impact of religion on public life. Although the (still incomplete) secularization of public institutions began to take place from the 19th century, the theoretical

solution had been found much earlier with Grotius' formula *etsi Deus non daretur* ('as if there were no God'). This approach shifted the centre of gravity of religion from public to private life and at the same time moved the centre of gravity of law from divine law to natural law based on reason. In other words, in order to make peaceful coexistence possible between Catholics, Protestants, Anglicans and so on, politics, the law, the economy and other areas of public life had to be secularized – placed under the exclusive control of reason and freed from the control of religion. But this solution, which guaranteed the religious peace of Europe for many years, cannot be easily applied today: first, because the connections between religion, ethics and culture make the repetition of the process of secularization much more difficult; and second, because the assumption that religion is a private matter which should not influence public choices is exactly what is now being questioned. It is necessary to find legal mechanisms which take into account the new public role of religions. But how is it possible to do so without falling into *communautarisme* which erodes the hard core of shared principles and values and risks endangering social cohesion?

The answer to this question has varied from state to state, according to their different histories and traditions. But these answers have some common features. First, the legal discipline of church–state relations is in constant flux all over Europe. There are many examples of these changes. In Portugal a law on religious liberty was enacted in 2001 and a new concordat with the Catholic church was concluded in 2004. In Spain the financing of religious communities and the teaching of religion in public schools has been reformed in recent years. In France three official reports were published at short intervals and prompted a number of legal reforms, some of which are still in progress: the Debray report on teaching religion in schools (2002); the Stasi report on *laïcité* in the French Republic (2003); and the Machelon report on the relations between religious communities and the state (2006). In Italy new agreements with minority religions were signed in 2007, and in the same year a new law on religious liberty was approved in Romania.⁴ Outside the European Union things are no different. In many public schools in Russia, the former homeland of state atheism, classes in Orthodox culture were introduced in recent years,⁵ and in Norway the decision was taken in 2006 to abandon the old system of the state church.⁶ These changes are too numerous and too close together in time to be explained away as simple coincidences. Rather, there is a sense that the socio-religious transformations of Europe have at last been noticed by the national legal systems, which have entered a process of adaptation to the new situation.

Second, a certain convergence of the church–state systems of the countries of the European Union (EU) is discernible. This is not the consequence of

any direct intervention by the EU, which has no competence in this field, but is due to the growing EU presence in other areas, which have indirectly influenced national legislations concerning religious communities.⁷ An analogous role has been played by the European Court of Human Rights both within and outside the EU borders, as a result of which certain anomalies in national legal systems, such as the need to obtain authorization from the Greek Orthodox church in order to build a place of worship in Greece, have been removed through decisions of the Strasbourg court.⁸

Finally, the constitutions of the post-communist countries of eastern Europe, which since 1989 have had to build their systems of state–church relations from scratch, were initially influenced by the United States and international organizations such as the Organization for Security and Cooperation in Europe and the Council of Europe which had played a significant role in their preparation, but after a few years this influence decreased and the most recent laws – particularly those on religious freedom and association – are closer to traditional European models.⁹

Now, putting to one side the matter of what these legal reforms have in common, the real question concerns the direction they are going to take. Are they following a definite course and can it be identified?

The transformation of the church–state systems in Europe

Although the classification is outdated and does not answer the needs of contemporary societies, we can start with the distinction between countries in which church and state are separated, countries where concordats and agreements with religious communities have been concluded, and countries that adopted the church-of-state system.

The first fact to emerge from a legal analysis of these models is the decline of the third category. On the one hand, all the post-communist countries – even those with a strong Lutheran tradition – avoided endorsing the church-of-state system in their new constitutions, and some of them went so far as to exclude this option for the future too. On the other hand, Sweden gave up its church of state, Norway is in the process of doing so, Iceland passed a law that strengthens the independence of its national church, and Finland modified the system of state church as a central component of its constitution, transferring the power to appoint bishops from the head of state to the faithful of the Lutheran church.¹⁰ Extending the analysis from northern to south-eastern Europe, the trend is confirmed. The legal systems based on a constitutionally dominant religion, which represents the Orthodox counterpart of the Protestant church of state,¹¹ show a parallel decline. The example of Greece, whose constitution defines the Greek

Orthodox religion as the dominant religion of the country, has not been imitated by any of the post-communist countries where the Orthodox religion is the majority religion.¹² The English system of an established church fares a little better, because the Church of England quickly understood the need to accept religious pluralism and chose to exercise its prerogatives and political power in favour of all religions existing in the country: the Anglican bishops who are by law members of the House of Lords frequently act as representatives of the different religious communities, not only of the Church of England.¹³ But it is still open to question whether, in the long run, this strategy will succeed in meeting the demands for disestablishment which are regularly voiced by important sections of British public opinion. Why are systems with a church of state – a dominant or an established church – declining? The most convincing answer is that they do not fit a religiously fragmented society, particularly if religious membership is no longer a private choice only but also a public expression of identity. The state's decision to have an official religion presupposes a religiously homogeneous society. When people are divided among different faiths, the state's adoption of one of them becomes a weakness because it prevents some of the citizens from fully identifying with the public institutions. In conclusion, the process of transformation of the European religious landscape shows that the new religious, ethical and cultural pluralism has outgrown the systems of church–state relations which are characterized by the legal identification of the state with one religion.

The second result of this analysis concerns those countries which have a system of separation of state and religious communities. Separation is a very common word in the constitutions of the post-communist European countries, perhaps because of the influence of the United States on their preparation. But if these constitutions are considered more closely, it becomes clear that this concept of separation excludes neither recognition nor support of religious communities by the state. It has little in common with the separation affirmed in the French law of 1905, for example, which prevents the state from recognizing or subsidizing any religious community. On the contrary, it is a friendly and cooperative form of separation, which does not rule out the conclusion of concordats and agreements between the state and religious communities and coexists with constitutional statements that oblige the former to cooperate with the latter.¹⁴ An analogous process of transformation has taken place in the country which is the emblem of separation: France. Today in France there is an institute (the *Institut européen en sciences des religions*) which is financed by the state and has the task of training state school teachers in the place and impact of religion in society; there is a private law foundation (the *Fondation pour les œuvres de l'Islam en France*), supported by the state and enjoying the status of a foundation for the

public good, whose task is to promote the building of Muslim places of worship; there is a ministry (the ministry of the interior) which played a fundamental role in the creation of the *Conseil français du culte musulman*, a Muslim representative institution. These examples show that even in France separation has become much softer and no longer excludes state interventions in areas which, until a few years ago, were considered outside the boundaries of interest and competence of public institutions.¹⁵

Once again, we need to ask why separation has acquired a different meaning and why even those states which had made it the central feature of their religious policy have changed their attitude. This time the answer lies in the new significance acquired by religion and collective religious identities on the political stage. After the decline of the great secular ideologies, religions seem to be the only forces still capable of speaking the language of collective identity and of offering their faithful an interpretation of reality and a sense of membership. All this gives them the power to mobilize significant groups of followers.¹⁶ This power is too important to be ignored by governments which, on the one hand, fear that religion will be exploited to create political and social unrest and, on the other hand, are tempted to make use of religion to achieve their own goals of internal and foreign policy. None of this can be achieved without engaging with religion and establishing relationships with religious communities, and therefore without giving up strict separation.

On the basis of these remarks it is possible to conclude that a process of convergence from extreme positions towards the centre is taking place in Europe, where the extremes are church-of-state systems on the one hand and rigid separation on the other. But what then is the centre towards which this process is moving? A closer examination of the Swedish case can help us here. In Sweden, giving up the church-of-state model did not imply the adoption of separation of state and church; instead, it opened the way to a complex system in which the legal status of the Lutheran church is defined by a special law and that of other religious communities is dependent on their registration. This arrangement maintains a special position for the old church of state and, at the same time, makes it possible to affirm the *laïcité* and impartiality of the state towards all religious communities, at both the symbolic and formal level.¹⁷ Similar models have been adopted by most post-communist states and, in western Europe, by those countries which have recently reformed their system of church–state relations (Austria and Portugal,¹⁸ for example). Religious communities can register in different ways and, depending on the type of registration they are able to obtain, receive different state support. This solution offers public recognition of religious communities and gives the state some control over them and the ability to grade its

support according to their importance.¹⁹ Finally, the proliferation of concordats with the Catholic church and of agreements with other religious communities should be highlighted. Such agreements satisfy the need of these communities to have a legal status that reflects their particular identity.²⁰ In conclusion, the centre of gravity of the European system of church–state relations seems to be shifting towards a range of national systems that are distinct but which share certain common features: acceptance of the public standing of religious communities; recognition of their special features; a certain degree of state control over them; and the selective and graded cooperation of public institutions with religious communities.

This analysis of the European pattern of church–state relations seems to confirm Jonathan Fox's conclusion: modernization does not imply church–state separation but a moderate involvement of states with religions.²¹ This statement should be elaborated by noting that state involvement with religion is the consequence of the particular kind of modernization taking place in Europe today, which is characterized by pluralism and the public role of religions. These are the two main drivers behind today's transformations, as is confirmed by an examination of the most important fields of state–religion relations. For example, if we consider the teaching of religion in state schools,²² the clear conclusion is that everywhere in Europe – including Russia, the other post-communist countries and France – states regard the teaching of religion as part of their educative task. The models are different and range from the denominational teaching of a specific religion to non-denominational teaching about different religions. The differences are not negligible but, in both cases, the old dogma which assigned the task of providing religious education to the family and to the church – and not to the school – seems to be outdated. Even a secular state cannot afford to ignore the importance of religion as an instrument for understanding today's world.

But this involvement, too, has to take into account the individualism and pluralism that characterize contemporary society and have modified legal systems that for a long time allowed a certain degree of state involvement in religious matters. Teaching of religion in public schools is a good example of this influence. In those countries where, until a few years ago, only one religion could be taught (Portugal, Spain and Italy, for example), it is now possible to teach a number of different religions. Moreover, if requested by students and their parents, the teaching can vary from year to year. Pluralism and individualism have left their mark and have opened the school doors to some religious minorities that had formerly been excluded. At the same time individual choice, which in the past was limited to the right to be exempted from the teaching of religion, has now gained a central importance. This trend is confirmed if we look at the systems that some European

countries have adopted to finance religious communities. They have increased the number of religious communities entitled to state support and, at the same time, have structured this support in ways that give a central place to individual choice – the tax-payer, for instance, has the right to indicate the religious community that should be supported and, as mentioned above, can change this preference every year.

A healthy injection of pluralism and individualism into the legal systems that are emerging as the new centre of gravity of church–state relations in Europe is a good thing: it could help to frame the state's 'moderate involvement' in ways that are compatible with democracy. If this path is not followed, it is likely that the European model of church–state relations will decline and be replaced by other models, closer to the separation seen in the United States or the neo-confessionalism of some eastern European states.

¹ See the research conducted under the umbrella of IMISCOE (International Migration, Integration and Social Cohesion), a research programme that has brought together 450 scholars from 23 European research institutions.

² 'The changing nature of churchgoing in modern Europe' is highlighted by Grace Davie in the passage 'from a culture of obligation or duty to a culture of consumption or choice. What until somewhat recently was simply imposed (with all the negative connotations of this word), or inherited (a rather more positive spin), becomes instead a matter of personal choice.' 'Is Europe an exceptional case?', in *State and Religion in Europe*, 2006. Istanbul: Centre for Islamic Studies, p 26.

³ This is the title of a book by Gilles Kepel (*La revanche de Dieu: Chrétiens, juifs et musulmans à la reconquête du monde*, Paris: Seuil, 1991). See also Casanova, José, 1994. *Public Religions in the Modern World*, Chicago: University of Chicago Press.

⁴ See Robbers, Gerhard (ed), 2005. *State and Church in the European Union*, Baden-Baden: Nomos. See also the contributions published by the *European Journal for Church and State Research*.

⁵ On the reform of state–church systems in post-communist European countries, see Ferrari, Silvio, W Cole Durham Jr, Elizabeth A Sewell (eds), 2003. *Law and Religion in Post-Communist Europe*, Leuven: Peeters.

⁶ See Plesner, Ingvi Thorson, 2002. 'State and religion in Norway in times of change', in *European Journal for Church and State Research*, 9: 263–70.

⁷ The same happened in other legal fields. For example, the European Union has no competence in family law; nevertheless the national legal systems of the EU member states became closer.

⁸ See Papastathis, Charalambos, 'Changes in Greek law on worship places', in *European Consortium for Church and State Newsletter*, July 2007: 6.

⁹ See Ferrari, Silvio, 'Church and state in post-communist Europe', in op cit (note 5 above), pp 411–27.

¹⁰ On the reform of the state–church relations in the countries of northern Europe, see the proceedings of the conference held in Höör (Sweden) in August 2006 in the context of the research programme on the notion of 'national church' (*L'année canonique*, v. 48, 2007). See also Christoffersen, Lisbet (ed), *Law and Religion in the 21st Century*, Nordic Perspectives.

¹¹ On the idea of church–state relations prevailing in the Orthodox countries, see the articles published in *L'année canonique*, v. 43, 2001.

¹² In article 13 of the Bulgarian constitution, the Orthodox religion is defined as the 'traditional' religion of the country (see Peteva, Jenia, 'Church and state in Bulgaria', in op cit (note 5 above), pp 47–72; see also Kalkandjieva, Daniela, 'Traditional religion vs. secular law in post-communist Bulgarian society', paper given at the Copenhagen conference on 'Religion in the 21st century', 19–23 Sept 2007), while the Romanian law 489/2006 on the 'Freedom of Religion and the General Status of Denominations' recognizes 'the important role of the Romanian Orthodox Church' (art. 7).

¹³ See Grace Davie, op cit (note 2 above), p 30.

¹⁴ For a few examples see op cit (note 5 above), pp 417–21.

¹⁵ See Messner, Francis, Pierre-Henri Prélôt, Jean-Marie Woehrling (dir), 2003. *Traité de droit français des religions*, Paris: Litec.

¹⁶ See Pace, Enzo, 2004. *Perché le religioni scendono in guerra?*, Roma-Bari: Laterza, pp ix–x.

¹⁷ See Friedner, Lars, 'State and church in Sweden', in Robbers, op cit (note 4 above), pp 537–52.

¹⁸ See Potz, Richard, 'State and church in Austria', in Robbers, op cit (note 4 above), pp 391–418; and Canas, Vitaliano, 'State and church in Portugal', in Robbers, pp 439–68.

¹⁹ See Friedner, Lars (ed), 2007. *Churches and Other Religious Organisations as Legal Persons*, Leuven: Peeters.

²⁰ The last one was signed on 25 October 2007 between the Holy See and Bosnia-Herzegovina. More generally see the contributions published in *Quaderni di diritto e politica ecclesiastica*, 1999: 1.

²¹ See 'World separation of religion and state into the 21st century', in *Comparative Political Studies*, 2006, 39 (5): 537–69.

²² See Willaime, Jean-Paul, and Séverine Mathieu (eds), 2005. *Des maîtres et des Dieux: Ecoles et religions en Europe*, Paris: Belin; Robert Jackson, Siebren Miedema, Wolfram Weisse, Jean-Paul Willaime (eds), 2007. *Religion and Education in Europe: Developments, contexts and debates*, Münster: Waxmann.