The Misconception of Religion as the Legal External Appearance of Identity? The Latest Studies of Olivier Roy

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The aim of this essay is to retrace the latest theses and hypotheses formulated by Olivier Roy, an influential European scholar who has worked almost all his entire academic drifting in the scientific fields of sociology, political thought, and more recently even in the pragmatic theory of comparative public law. His researches have had seminal consequences in the liberal debate related to the importance of religions in the so-called “public sphere”, significantly evolving the level and the depthness of studies on secularization. To recognize this leading figure and the high quality of his historical and political formation does not mean to refuse an open-oriented confrontation with two aspects apparently undervalued in Olivier Roy’s works. First of all, we can still consider (and emphasize) the necessity of a legal theoretical contribution to justify the transition of religions from their static and original normative demand to their current pluralistic variety of internal legal schools, accents, and especially customary practices. Subsequently, we have to imagine an ultimate criterion to recompose the differences in every cult and in getting an ideally political point of view from each religious belonging in an always more crumbled juridical culture. It cannot be anymore the defense of the Christian roots of Western liberalism, but it could become the opportunity to embrace the universality of human dignity and to tackle the strength of the most arduous social issues in the multicultural society we are living in.

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The Historical Background of a Constitutional Research Concerning the Legal and Theoretical Framework of Europe

The most recent essay of Olivier Roy is a short analysis of the current state of public debates about religions and their most visible symbols and behaviors (Roy, 2019). The geographical scenario is limited to Europe, but it is unavoidable that many references come from Asia to Africa and even in a more peculiar way United States of America: By speaking about the legal role of religions in enforcing the effectiveness of rules, the thematic focus obviously passes by the simple territorial limit and starts to face the complexity of globalization.

Olivier Roy curiously forgets the ethical and ideal contribution of the Italian federalist Altiero Spinelli in founding and shaping the concept of a common European and peaceful legal system, preferring to give tribute to Schuman, De Gasperi, and Adenauer, three faithful and devoted politicians remembered as moderately conservative. Spinelli was a sincere secular liberal and radical intellectual and it probably means that the idea of Europe in the sense of an autonomous political subject is just not a Roman-catholic heritage (Burgess, 2006).
vivid contradiction between a formerly established Christian public opinion and the claim for civil rights even if they were opposed by religious hierarchies was particularly strong in 1968: Many European students and workers were battling for a wider reformation of customs and laws even in the legal discipline of reproduction and sexuality (Seidman, 2004); the Pope Paul VI answered enforcing the traditional doctrine in an important but discussed document as the encyclical *Humanae Vitae* (Smith, 2018).

A remarkable methodological issue in Roy’s work is to keep always linked stances of secular reformation and consequences of historical processes. This brilliant approach makes him able to correctly remember a usually forgotten coincidence: The simultaneous occurrence of the Lutheran reformation and the first wave of colonialism, as a sign of a world expanding its metaphysical and physical borders. It implied that many political colonial secular authorities (France, Portugal, and Spain) used their influence to orient and to control the Church, encouraging a local and loyal priesthood, not depending by the Holy See (Hahn, 2019, pp. 154-155).

Scholars in the scientific fields of canon law, ecclesiastical law, and theology were keen on distinguishing the cultural implications of European reformed religious groups and the American ones: These religious movements did not try to reform their own legal civil order and did not pretend to lead the Apostolic See back to an original doctrinal purity; on the contrary, they historically and theoretically proposed to establish a typical confessional state system based on a modern way theocracy (we can considered the mournful tempted Mormon secession in Utah: Brown Firmage & Collin Mangrum, 2001, pp. 213-214).

Roy reaffirms a well-know axiom in the reconstruction of our civil legal systems: The secularization uses in disciplining the public and the private spheres theological concepts translated into a not religious (but however universal or supposedly universal) paradigm. Notions as the loyalty during the stipulation, the equity in the decision-making, the integrity and the normative representation of the marriage (Witte, 2012, pp. 214-15) … remind semantically a moral building up of general coexistence with a spiritual and confessional ethical basement. Roy admits that we cannot think about this predictable and hardly questionable heritage assuming that it is an immobile situation. Legal institutions are changing regulative instruments in religious faiths and in the same way for statehood’s rights. We have to adapt a codified institution to understand and modify the reality. As Roy noticed speaking about the interreligious dialogue, for instance, it is at this point insufficient to interpret that dialogue as a mere formal canon law qualified relationship (Cassidy, 2005): The dialoguing groups maybe do not need a formal scheme to keep on confronting; groups openly hating and battling each other will not use a dialogic module to regulate their relations (O’Neill, 2015; Emon, 2012).

**Migrations, Religions, Identities: A Roadmap of the Newest Social Issues**

The current context is demonstrating completely new coordinates. The supposed rising of Islam is yet to come in a demographic sense, because migrations, internal conversions, and second generation foreign citizens still represent a modest percentage, destined to increase in few decades or, at least, in few years. Local public opinions, even in traditionally Christian countries (from Ireland to Poland, from Italy to Serbia), are sharing a fundamentally secular mentality in many strategic aspects of general behavior and customary accepted informal rules: politics, consumerism, and sexuality (Bretherton, 2011, pp. 80-82). Populist movements are trying to get their consensus from using social fears and reinterpreting them as stances to be declined just by rediscovering a consistent renewal of national identities. For those nationalist parties, religions, and particularly Christian beliefs, are simply the external and most recognizable side of an egoistic claim of self-reassurance. The process is exactly the opposite if compared to enlightenment’s philosophical and political metaphorical platforms:
Descartes (Smith, 1991, pp. 23-24) and Kant (Weithman, 2016, pp. 216-217) proposed a methodological and moral way to investigate the mankind still influenced by a codified language founded on a religious universal Christian feeling, but results may vary and that foundation on ethics and freedoms was conceived to avoid the religious obligation of declaring, defending, and imposing a peculiar faith or a typical cult.

Theoretical contributions like these were determinant in shaping the prerequisites of a public schools’ system that definitely raised in France from 1882 (institution of a secular not religious national school) to 1905 (with the promulgation of the famous “Separation Law” establishing the complete indifference—and superiority—of the state in its relationships with religions and legal internal confessional religious orders).

Not totally surprisingly, secularization did not destroy the religious basement of many civil and criminal codes in Europe, especially considering notions, like public order, public safety, public decency, and public morality. This heritage overtook the idea of a particular religion and fixed an even more universalistic horizon based on an abstract absoluteness and certainty (Eberle, 2002, pp. 23-26).

The Roman-catholic church experienced paradoxically the opposite approach starting from the Vatican Council: A liturgical and linguistic reform adopted to stand by the side of civil societies and not of a doctrinal shielding (Ndi, 2018, pp. 37-38). This development is probably the consequence of a well oriented view to the world: A world of largely shared ideal issues of social transformation, from the Mid Sixties China to United States’ universities’ movements, from the Mediterranean formerly conservative Europe to antiracial groups in Africa.

This theological renewal was absolutely incisive in moving on the church and the symbolic imagine of Christianity from the experienced conservatism to an optimistic presence in the secular world, but it missed to give universally accepted answers in facing unpredictable new scientific dilemmas (Berlingò, 1998).

A recently increased case study consisted in defining the legal concept and the legal effects of filiation: Modern civil laws are collecting an understandable indecision, from a mere biological notion to a social comprehensive appraisal of the general affective elements of parentage. Religious scholars, if it could seem strange, traditionally preferred a bare natural conception of procreation, defending it by arguing about the existence of an immutable “divine law” (VanDrunen, 2014, pp. 128-129). The sense of pity and compassion related to the historical becoming of Christendom gets significantly undervalued in this hermeneutic process.

The Missing Conclusion: A Philosophy of Governance

It is almost formally declared that the self representation of a society stands in an internal battle of partial values fighting each other to affirm a dominant sense. The main formulation of this thesis, not lacking of empirical feedbacks and legal aftermath, is due to James Hunter who was speaking about the American society: A figurative constant fighting between liberal sensibilities and strongly conservative values, well learned fragments of a progressive public opinion and productive but somehow small-minded pieces of the same public sphere, state by state, city by city, and neighborhood by neighborhood (Hicks, 2010).

A similar approach, lowered into a more indistinctive general proposal, was used by Samuel Huntington in describing a sort of clash between the liberal secular heritage of Northern and Western societies and the discussed aggressive impetus of the Southern and Eastern ones (Huntington, 1996). After decades of trying to collocate in the correct sense this tempted categorization of conflicts, we can admit that this kind of clash is absolutely transversal and can divide even a single part in the blocks of the quarrel (Roy, 2008). These internal faults open up the space for unpredicted connections. Roy remembers an often unacknowledged episode of
those uncertain conjunctures ready to articulate a wall of resistance against civil reformism: The Lyon manifesto of 2007, where a very ample but not totally representative coalition of Catholic scholars, Hebrew conservative intellectuals, Islamic literal exegetes and Lutheran and Evangelical doctrinaires decided to show a common and ambitious public point of view against same sex marriages. The inter-confessional debate turned into a barrier against civil laws (strangely enough, the interreligious dialogue has on the contrary been a traditional instrument of cooperation between legal powers and different religious belongings and believing).

Even in countries connoted by a diffuse percentage of agnostic and atheistic people, as in Europe Czech Republic, Slovakia, and France certainly are, the legal-institutional position of Catholic churches and hierarchies is stronger than the others (Licastro, 2014); so, it means at least two things: Religious belongings do not represent univocally a correspondent public point of view (Foret, 2015, pp. 2-4) and irreligious public points of view do not impede the eventuality of a favorite (established or not formally established) religious group. The first notorious theorist of Christianity as the basement for an identity and not like a simple religious stratification of cults was besides Michel de Montaigne (Hartle, 2003, p. 8).

The laical and sometimes anticlerical public opinion—including in it a not irrelevant part of liberal and progressive intellectuals—is likewise divided, because the opposition against clericalism sometimes changes if we consider the various fundamentalist components in religion: There could be a strong contrariety against Christian fundamentalism, but a substantial undervaluation of Salafi movements however ongoing in some European countries (Pall, 2004, p. 40); there could be an assertive and determined ideal protest against family violence and domination in Islamic (Roy, 2007) or gipsy communities, but a complete ignorance of even worse phenomena in Haredim Hebraism (Sharot, 2011, pp. 223-224).

It is actually coming a sort of an empathic feeling between the legal defense of the cultural roots for European statehoods and the judicial evidence and protection of an assumedly connected Christian theoretical and institutional framework (Perkins, 2004, pp. 237-239). It is more notable in German jurisdictions because in it, they are affirming a cultural Christian identity to justify administrative provisions against religious minorities or administrative measures in favor of the basically Christian-oriented majority (Elver, 2012, pp. 132-134). Switzerland is following in generally prohibiting religious personal symbols (Islamic veil, for instance) simultaneously preserving the possibility of using the Christian ones (crucifixes, nativity scenes, and Holy Scriptures’ reproductions). Denmark is trying to limit forms of ritual slaughter (kosher and halal) with some quantitative results and the government has justified this restrictive reform in order to defend animal rights, but it does not seem properly the case, because it more probably means to limit social praxes linked to a religious background (Waterfield, 2011). The risk, well noted by Roy, is to transform many not exclusively or formally religious practices and customary rules in trials between religious and irreligious, religious prevailing or religious succumbing, points of view. Secularization has overtaken a static idea of religion, based on rites, ceremonies, rituals, and the equality of confessional precepts and civil laws. On the other hand, secularization seems to be losing the game with the enlarging idea of religion, making it more various and all-encompassing than ever (de Jong, 2000). Roy describes in full this troubled transition, but he basically misses the necessarily preliminary question: How to preside over the conflicts arising from the difference in the selection of meanings, rules and moral founded perceived social obligations (Temperman, 2015)? Are we missing the previous antecedent for whatever question: To individuate a philosophy of governance?
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