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Religion and Politics and the Constitutional Patterns of their Mutual Accommodation

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## Introduction

Given the complexity of the political, social and cultural situation in the Middle East, it is difficult to assess exactly the role of religion in that political conflict; therefore the analysis of the relation between religion and politics may be of questionable relevance. Yet there are some instances which obviously have religious implications: Israel understands itself as the homeland of the Jewish people, and some groups in Israel explicitly use religious arguments in order to justify the claim that certain territories are inherent parts of the Jewish state. Also the rights attached to the status of Israeli citizenship are partially dependent of an individual's religion. Moreover, the constitutional structure of Israel as a whole is strongly influenced by the religious legitimation of the state of Israel, in that, to give only the most striking example, all attempts in the past to give the country a written constitution proved unavailing because the main political forces could not find a consensus about the guarantee of the fundamental right of religious freedom.

Of course, also the Palestinian cause has religious connotations, although their main issue seems to be national self-determination. At least the suicide attacks of some of the diverse groups which lead their 'private' war against Israel are strongly inspired by the Muslim idea of the *jihad*, and their connections to radical foreign Muslim groups and possibly also governments suggest that the national cause of the Palestinians is closely connected with the political role of the Islam in the Arabic world. Finally, the ultimate reason why the Israeli-Palestinian conflict has so far resisted any compromise over more than half a century may have to do with the fact that the political cleavage between Israel and the Palestinians is more or less identical with a religious divide between Jews and Muslims.

These general observations give sufficient reason for reflecting the connection of religion and politics from the perspective of modern constitutionalism. Since the origination of modern constitutionalism in 17<sup>th</sup>-century England the issue of religious liberty has been one of its *leitmotifs* until our days. There has been an intense scholarly debate about the claim of Georg Jellinek at the beginning of the 20<sup>th</sup> century that the right to religious freedom is the first modern fundamental right codified in a constitutional document. However this may be, the status of religion is by no means a purely historical issue. Against many predictions to the contrary religious conflicts are not restricted to premodern societies; they cannot be understood as pure modernization conflicts; they are also conflicts of modern societies. Also in the secularized world of today religious issues create deep political tensions in many constitutional states. After all, Northern Ireland has been living on the verge of a religious civil war since more than 25 years. There are other cases of deep politico-religious tensions which need political accommodation and constitutional solution as, for instance, the current French debate (and legislation!) about the right of Muslim women to wear the scarf in public institutions (like schools or universities), a debate which in a different version has now reached also Germany. Other examples of political and, consequently, constitutional disputes

in advanced modern societies are the well-known battles about school prayers, about displaying religious symbols like the crucifix in public schools, or about religious instruction in Germany and/or in the US.

Until the middle of the 20<sup>th</sup> century constitutionalism was mainly a Euro-Atlantic concept and political praxis, and therefore constitutionalism dealt primarily with the conflicts which resulted from the confessional splits within Christianity. Two major developments have changed this situation. First, Christianity no longer defines the framework of religious conflicts, even not in traditionally Christian European and US societies. They have undergone profound transformations to multiethnic societies which comprise communities of all major world religions including the increasing group of atheists. Second, constitutionalism is no longer an exclusively Euro-Atlantic concept. At the end of the 20<sup>th</sup> century constitutionalism has become yardstick for civilized governance on a global level. This means that the Euro-Atlantic experience with the role of constitutionalism in the establishment of civilized governance may be helpful for other regions of the world which undergo conflicts similar to those which particularly Europe suffered in the age of religious conflicts and civil wars. But one should always take into account that today constitutions must develop solutions of civilized governance for societies which are much less homogeneous than the Euro-Atlantic societies were in the age in which they crafted their early constitutional modes of governance.

A further caveat seems appropriate. In the 19<sup>th</sup> century, when the European nations defined international law as the law which governs the relations of ‘civilized nations’ they defined as ‘civilized’ only those states which guaranteed, among other things, religious freedom and the protection of religious minorities within their boundaries. Clearly this aimed at the protection of Christian communities in non-Christian countries (like, e.g., in the Ottoman Empire) and reflected the dominance of Christian countries in international politics. This tradition must not lead to the view that the Christian conception of the relationship of religion and politics has to be regarded as the constitutional conception per se. However, it is possible (and a matter of further research) that essential elements of modern constitutionalism – such as fundamental rights, separation of power, the independence of the judiciary, the autonomy of certain societal spheres like religion, science, and the arts – are more attuned to the Christian than to other religions. I do not have the disciplinary competence to enter into such an exploration with respect to the Muslim and the Jewish religion. In what follows I restrict myself to a rough account of the Christian perspective on the relationship between religion and politics. I am well aware of the fact that this may at best provide a partial view on the whole truth of the matter.

## I.

For thousands of years religion and politics had been friendly associates which worked together for the stability of a great diversity of societies in that they united religious and political charisma. For some distinct and charismatic individuals who had access to the portentous world which lay beyond the understanding and the control of ordinary human beings religion provided the authority, the blessing and the sanction of that world and thus rendered these individuals the natural born leaders in all affairs of this world. Conversely, the sanctified political leader protected the holy places and the fame of the Gods against all kinds of desecration through human offenders. This close relationship persisted also in the three monotheistic Abrahamite world religions, albeit in different ways. The Jewish covenant of Sinai constituted simultaneously the Jewish community as a polity (or a people) and the relation of the Jewish people with God. Thus the individual or collective violation of the duties of the relationship with God included the violation of the political relationship among the Jewish people, and vice versa. A political fault amounts to a sinful act, and a religious truth has to be enforced politically.

In the Islamic religion the relationship between religion and politics is somewhat different because this religion is not the exclusive property of a particular people and hence proselytizes. Mohammed received the revelation that he was a messenger of God from the angel Gabriel in the year 610 A.D. in Mekka; but the founding day of the Islamic religion is not this day of divine manifestation, but the 6 July 622, the day when Mohammed emigrated from Mekka to Medina. Medina was the starting point of his career as a political and a military leader. The establishment of the Islamic religion in the hearts and the souls of the increasing number of believers was the result of the foundation of a political community which disposed of the military means for the struggle for this religion. Although the polity is not identical with the religious community, the Islam is an inherently political religion in that the polity is regarded as a community which enables the believers to live a life in this world according to the commands of God – in a way, the worldly polity is an instrument of the realization of the tenets of the Islam. Although true believers can also lead a pious life in a society of non-believers, they are more likely to acquire the salvation goods of the other world if they live in a Muslim community.

Contrary to both the Jewish and the Islamic religion the Christian religion was apolitical at its very origination, even antipolitical. Jesus from Nazareth preached that “my empire is not from this world” and thus turned the hopes and aspirations of his followers away from the benefits, the reward and the sufferings of this world to the promises of the other. He did not fight for worldly power as a means for the dissemination of his message. Yet it was this unconcern of his followers about the sufferings which this world imposed on them because of their belief – sufferings which Jesus himself had borne through his crucifixion – which eventually gave this religion an enormous worldly power. When finally in 313 A.D. emperor Constantine made Christianity the official religion of the then universal Roman Empire Christianity developed more or less the same relationship between religion and politics as the Islam. It was the relationship of a marriage in which the worldly power used its resources for the protection, strengthening and dissemination of religion and in which religion sanctified the power-holders and thus immunized them against challenges of their power by potential rivals.

In the Christian religion this relationship came under strain already in the early Middle Ages after the collapse of the Roman Empire<sup>1</sup>. It remained an open question who of the two obvious candidates could claim to be the empire’s legitimate successor: the Catholic Church ruled by the Pope, God’s vicar on earth, or the Carolingian Emperors and their successors who had established their worldly rule over much of Western Europe including Italy. The crucial issue which in the centuries to come became the source of latent, but frequently also manifest conflicts between the Popes and the Emperors was the fact that both disposed of a power apparatus. Strikingly, until the 16<sup>th</sup> century that of the Church was even more modern and more efficient than that of the Emperors. The Catholic Church was the first European institution which established what we would call today a bureaucratic organization. Despite the poor means of communication and traffic throughout the Middle Ages this ecclesiastical bureaucracy enabled the Pope to exercise religious control over an extended territory. This apparatus consisted of a hierarchy of professional religious officials who had adopted the basic legal concepts of the Roman law and hence, although representing the Christian religion, embodied a modern, unpersonal and hence efficient worldly power. (Incidentally, this did the Church not prevent from becoming one of the most important feudal lords with a great number of vassals and feudal tenants). Consider the fact that the Popes, the top officials of this bureaucratic power apparatus, were God’s vicar on earth and hence embodied the spiritual energies of the Christian religion, it is not surprising that they claimed superiority over the Emperors whose power rested upon the more fragile foundation of feudal vasallity.

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<sup>1</sup> Cf. H. J. Berman Law and Revolution. The Formation of the Western Legal Tradition. Cambridge/Mass.: Harvard Univ. Press.

In comparison with the Pope's bureaucratic rule feudal power, based on bonds of personal loyalty, was vulnerable to disloyalties, defection and many other kinds of human weaknesses.

This dualism of spiritual and secular power in the Christian European Middle Ages originated dramatic conflicts between them times and again, but it did not undermine the idea of a universal and united *societas christiana* as a community which was held together by the same belief. Moreover, paradoxically it was the fact that the Church was embodied in a worldly bureaucratic and legally organized hierarchical apparatus which mitigated the intensity of the conflicts and allowed manifold compromises. The religious energies of the Christian belief were, so to speak, bounded by the legal rationality and the strategic self-interest of the religious bureaucracy to preserve the institutional integrity of the Church as a worldly power. In other words, the bureaucratic form of the Christian religion transformed its transcendent truth into an authoritative doctrine supervised and protected by a hierarchy which constituted not only a theological, but at the same time a distinct social category. As such they were disposed to develop particular social, economic, or political, i.e. worldly interests.

One may say that in the Christian Middle Ages the tension and the ensuing conflicts between religion and politics – i.e., between the Popes and the Emperors – likened conflicts between two rival worldly powers, although, of course, the Church invoked its spiritual origin and legitimation as a kind of holy surplus for its secular standing in this world. But, with the benefit of hindsight it is safe to say that the destructive energies of religion were largely tamed by this politico-institutional pattern of the Christian religion embodied in the Roman Church. It should be added that in the feudal structure of the Medieval world the existence of multiple loyalties to several lords was a normal part of the social life of each individual including the emperor himself. Thus the conflict between two powers both of which were deeply entrenched in the social fabric of feudal life and stood under the authority of the one and exclusive Catholic religion did not threaten the integrity of the social order. Although the spiritual and the worldly spheres were distinguished, that did not mean that politics and religion were separated from each other. The Emperor was the worldly sword for the defense of the Christian religion, and the Church was responsible for the salvation of the souls of the believers. Both served, if with different means, the glory of Jesus Christ – politics and religion were much the same, embedded in the universal *societas christiana*.

## II.

The religious force which really challenged the worldly order and laid the foundations for our present political and legal order of the relationship between politics and religion has been the individual conscience. It was Martin Luther who at the beginning of the 16<sup>th</sup> century discovered the conscience of the individual as the source of his and her religious belief and as the moral 'organ' through which Christians communicate with their 'personal God'. The conscience is the spring which tells the individual what is right and what is wrong and which commands him to do the right and to avoid the wrong. The individual conscience is, so to say, the locus of each person's access to God, it is God's voice itself. Therefore the commands of the conscience are binding upon the individual without qualification. Most importantly, if the commands of the conscience conflict with duties imposed by a worldly power, the former take precedence over the latter. The problem of the conscience as the ultimate source of an individual's willingness and capacity to obey is its radical individualism: there is no religious superior – a church – which can claim a higher religious authority as that of the individual's conscience, and hence it can neither release the individual from the binding force of his or her conscience nor impose on him or her duties of obedience which contradict the conscience.

As we know, this idea became the starting point of the split of Roman Christianity and of the establishment of a plurality of protestant denominations in Western Europe. But it was not only that. It was the dissolution of the time-honoured *societas christiana* which profoundly

unsettled the fundamentals of the individuals' life orientations. This was not something what we today are inclined to call a 'merely religious' issue; it was an issue of life and death, in that the entrenched loyalties, expectations, certainties and feelings of belonging and protection were put into question. So it is understandable that the confessional schism came to pass in a long series of violent and cruel wars in all West European entities, including the Holy Roman Empire of the German Nation and the other Christian kingdoms like England and France. They have rightly been called 'civil' wars because the issue was the entire order of social life in which the economic, social, cultural and religious dimensions of human life were not yet separated from each other. Thus, the first attempt to find a peaceful solution of the religious or, for that matter, the confessional conflict, the Treaty of Augsburg of 1555, established the principle *cuius regio, eius religio* which means: each prince had the right to determine the exclusive confession of the subjects in his realm – a principle of authoritatively imposed confessional homogeneity which included the right to drive the dissenters out of his country. The status of political belonging was attached to the adherence to the right confession.

Why, then, was religious homogeneity so important, and why were people at that time so concerned not only about their own religious belief, but no less about the right Christian faith of his neighbours and fellow-creatures? For those who adhered to the traditional belief and its institutional embodiment, the Church, religious dissent was tantamount to destroying the community which protected and nurtured them both spiritually and physically – hence it is understandable that they defended the 'true religion' with all means including armed violence. On the contrary, for the protestants it is less obvious why they should be fighting for religious homogeneity on the basis of their belief. After all, their religion was not about the 'public good' of the community of the believers, but about each individual's personal relationship to his or her God. Their concern was not the Church, but the conscience. It is difficult to explain why *they* were not indifferent to the belief of their neighbours. It may have to do with the salvation which they hoped to achieve in the eternal life and which could not be earned by good actions but was achieved solely by an act of God's grace – and His will was inscrutable. On this religious fundament, pious protestants lived in a state of unending uncertainty, of fear and hope for the grace of God without ever getting final reassurance in this life. Moreover, given the new situation of competing and disputed claims to religious truth, didn't the individual have to suspect that his conscience was mistaken and might have led him to follow the wrong God? In this situation of deep uncertainty and doubts it might have been soothing to know that all one's neighbours believed in the same God and hence did not sow additional doubts in the soul of the individual. To know that all one's neighbours and likes pray to the same God may have strengthened their confidence that they finally will be redeemed. Thus, paradoxically, it may be the case that it is the individualist character of the protestant religion which creates the need for the embeddedness in a community that reinforces the individual's belief and gives him reassurance.

Consequently religious duties towards God and social duties towards the community of fellow believers were unseparably intertwined. An individual's failure to perform this duty was at the same time a sin and a crime. Religious dissent was not simply religious dissent, but a severe and intolerable challenge to the social order and its inherent justness – so it became something like a religious duty to persecute the heretics and to reestablish the social order sanctified by the true God. Appeals to reason and to mutual tolerance would have been pointless because too much was at stake: nothing less than eternal salvation. Obviously, in this field no compromise was possible.

### III.

This uncompromising character has to do with an attribute characteristic of monotheist religions. Religious subordination to God is total and unconditional, it is incomparable with any promise of obedience to an authority of this world. This absolutism – the existential wil-

lingness to unconditional obedience and surrender to a transcendent power – renders any power of this world and its commands largely irrelevant. He who subordinates unconditionally to God gains by this very act of total submission “liberation from any authority of this world”<sup>2</sup>. Once he has realized that it is God’s will that all humans, being His creatures, have to pray to Him, the true believer can act to fulfill this will with utmost recklessness. For him the worldly order does not exist for the sake of the wellbeing of the people but for the sake of the glory of God. The social and political order is the manifestation of God’s glory and omnipotence – hence the character of this order hinges on the correct understanding of God’s will.

A further consequence of the fusion of religious and social duties is the impossibility of neutrality. In the sphere of international law neutrality as a legally recognized status emerged when the medieval concept of the just war had disappeared. In a just war it was the duty of a Christian prince to struggle for the just cause, to fight in the war and to take sides for the prince who fought for the just cause. Not so if wars were fought for the protection of the interest of the state and if each state had the sovereign right to define its interests without being subject to the judgement of any other worldly authority. As a result the seemingly paradoxical constellation of a *bellum justum ex utraque parte* – a war which was just for both enemies – evolved which implied that a normative evaluation of the war was no longer possible. In the last instance this gave rise to the ethically neutral *ius ad bellum* which made it a matter of reason of state and of political expediency to wage a war or to support one of the parties of a war conducted by other states.

Neutrality in the domestic affairs of a polity has been much more difficult to accomplish than in the international sphere as long as the polity is regarded as a community of true believers which has to embody God’s will in this world. Such a community cannot even conceive of neutrality with respect to the individuals’ duties because one cannot be neutral towards God and His commands, except in the case that one is a disbeliever. Disbelievers, however, cannot be members of this community. On the other hand, a community which insists that God’s commands must be the law of the community and rule the social interactions of the members of the community, must preclude social change, because God’s commands are immutable; it cannot accept either dissent or even open questions, because there is always a class of priests who know the truth and impose it authoritatively upon the society; and it does not develop institutions (like science and technology, or the idea of neutrality towards competing truths) which allow the community to cope with unforeseen and hitherto unknown phenomena other than interpreting them as the expression of God’s will. In other words, such a society gambles away its future.

In the European case it took almost one century of religious civil wars before religion and politics parted company. The furor of religious self-righteousness and hatred had devastated extended territories and disrupted decent and civilized social intercourse and cooperation in large parts of the continent. Rarely in history have the enormous social energies of religion proved to be so destructive. The separation of religion and politics began with the rise of a thoroughly new kind of polity – the modern state. It evolved in the 16<sup>th</sup> century and had reached its major quality in some parts of Europe, notably in France, by the middle of the 17<sup>th</sup> century. Its characteristic, defined already by Jean Bodin at the end of the 16<sup>th</sup> century, was its sovereign power over a delineated territory and its inhabitants. Sovereignty means absolute, perpetual and undivided power of the ruler<sup>3</sup>. It includes his authority to impose unilaterally laws on his subjects; they have no right to resistance against a law which they consider to be

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<sup>2</sup> Cf. J. H. H. Weiler Federalism Without Constitutionalism: Europe’s *Sonderweg*, in In R. Howse K. Nicolaidis (eds.), *The Federal Vision. Legitimacy and Levels of Governance in the United States and the European Union*. Oxford: Oxford University Press, pp. 54-72 [68].

<sup>3</sup> Jean Bodin *Six Books of the Commonwealth* [1576], Book I, chpt. 8 (abridged ed. By M.J. Tooley, p. 25 ff.)

unjust<sup>4</sup>. Once the binding force of the laws is disconnected from a claim to truth and justice – according to Hobbes’ *auctoritas non veritas facit legem* – the society can develop social fields of neutrality in which social interactions are possible whose value is not judged by standards of religious truth but by their contribution to the welfare of the society. Paradoxically, it is the sovereign power of the prince and its agnosticism which ultimately paved the way for a genuine religious life in the society. The sovereign prince is primarily interested in his subjects’ obedience to him, not to God. As long as the subjects’ obedience to God corroborates their worldly conformity with the sovereign’s laws, the sovereign will certainly welcome the piety of his subjects. But he can never be sure that this will be the case; rather, he must anticipate the possibility of conflicting commands – for instance, his order to his subjects to go to war and to kill the soldiers of the enemy conflicts with the Christian command not to kill – and of conflicting loyalties which are prone to threaten his rule. Thus, in the long run it is in his best interest to exclude religion from politics altogether. As we know, in Europe this did not occur before the end of the 18<sup>th</sup>, in some countries only in the 19<sup>th</sup> century – but the main pattern was created through the establishment of sovereign power as the essential medium of societal integration.

Closely connected with this element of modernity is the emergence of a new paradigm, the paradigm of self-preservation and security as the essential purpose of a society. From the 16<sup>th</sup> century on at the latest living together in a society had lost its character as a natural given, because the belief that man is an inherently social being had been upset by the experience of unimaginable cruelties and meannesses in the religious wars of more than a whole century. Individuals had to learn that human beings are wolves to each other – *homo homini lupus*. Society had to be manufactured, it had become an artificial state of life into which individuals enter only for reasons of self-interest. This entailed a fundamental change of the character of an individual’s duties towards the society and divorced them from the duties which follow from God’s commands. If the social world is a man-made construction which has to domesticate the centrifugal forces of a-social beings an individual’s duties in this society can only be justified with reasons of utility for the society; they have nothing to do with the sanctity of the duties towards God.

Not only society ceases to be a natural given, nor is nature itself. It is not by accident that this age – most importantly the 17<sup>th</sup> century – is the age of the rise of the modern sciences, in particular of physics which regard the world as an object of purely rational cognition. In order to understand the world the modern individual did not immerse themselves in the Scripture or other religious texts, but rather developed experimental modes of exploration. The guarantee of the objectivity of the world which formed the stable fundament of man’s confidence in its inherent rightfulness shifted from religion to science. This is the point of departure for a new comprehension of religion, namely an understanding in which the truth of religion was no longer equal to ‘objective’ truth, but became something like a subjective truth of each individual believer. From now on ‘objective’ truth was tantamount to scientific truth. That did not mean that religion disappeared or became irrelevant. Rather, its status in the lives of individuals changed. Religion became the source of personal fear, or hope, or comfort – a reaction to what Hobbes characteristically called man’s – and solely man’s – “search of the causes of their own good and evil fortune”<sup>5</sup> which he associates with religion.

Once religion is no longer a sphere which contains the undisputable truth to which man aspires in order to understand his and her life in this and in the other world but has become the personal truth of individuals it belongs to the category of what Hobbes calls opinion and doctrine – expressions of subjectivity which are prone to generate religious plurality and dispute and, according to Hobbes, even civil strife because “the actions of men proceed from

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<sup>4</sup> Book I chpt. 8 (pp. 25 ff.).

<sup>5</sup> Th Hobbes Leviathan, chpt. XII.

their opinions”<sup>6</sup>. As personal beliefs assertions of religious truth cannot claim to be binding for the life of the polity without threatening the peace of the society – which of the many competing truths shall be declared the ‘real’ truth, and who shall decide? Hence there are basically two possible answers to claims to impose a particular religious truth upon the society: either religious plurality is suppressed by the sovereign power of the polity in order to avert the dangers which may result from the subjectivity of the individuals and the dispute among the plurality of religious truths, or religious plurality is accepted by way of a constitutional guarantee of individual and even corporate religious freedom on the condition that religion does not interfere with the sphere of politics, that is, that it remains a private issue of private individuals. In Europe the former alternative resulted in several versions of *cuius regio eius religio*, i.e. of state churches and its monopoly to define the legitimate and legal sphere of religion in the society, whilst the latter entailed the model of the US constitution.

Of course these alternatives do not really exhaust the full range of constitutional models of ordering the relationship between religion and politics. Today in some countries like Germany religion has been recongnized as a force of public life without establishing a state church. If we compare France and the US we observe that the very same principle of the separation of religion and politics has created two quite different patterns of organizing the role of religion in the polity. Rather than elaborating on the details of the diverse versions I want to add a few remarks to the question of why the relation between religion and politics has been so problematic ever since the 16<sup>th</sup> century until our days.

#### IV.

Despite the dark record of religious civil wars in the history of Christianity which suggests a clear-cut line of separation of religion and politics in all modern societies this relationship has remained problematic and is likely to continue to be disputed. The reason for their ultimate incompatibility is their mutually exclusive claim to the individuals’ loyalty. Religious communities – in particular monotheistic religious communities – are able to elicit the individual’s total and unconditional submission to the commands of God to the effect that the commands of his of her worldly master become irrelevant. Total self-chosen subjection to a transcendent master creates freedom from the constraints of any human master and thus is a threat to this master’s claim to obedience. On the other hand, it is a characteristic of political communities, too, that they demand exclusive and total loyalty of their members who, to quote Max Weber, are „expected ultimately to face death in the group interest”<sup>7</sup>.

So, both religion and politics deal with obedience and loyalty, and if they are owed to different masters and if the demands of the masters on the individual contradict each other, the conflict about superiority is unavoidable. That is why Hobbes insisted that the worldly and the spiritual power had to be united in the person of the worldly sovereign. Rousseau was the first political philosopher who developed an explicit political theology in that he took the conflict of loyalties seriously which are likely to arise if political and religious principles and duties are not identical. Consequently he applauds Mohamed because he gave unity to his political system, “and for as long as the form of his government endured under the caliphs who succeeded him, the government was undivided and, to that extent, good”<sup>8</sup>. This theocratic form of government is good because it avoids the split of loyalties and because it has the implication that “to die for one’s country is to become a martyr, to break the law is to be impious, and to subject a guilty man to public execution is to hand him over to the wrath of

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<sup>6</sup> Ibid., chpt. XVIII.

<sup>7</sup> Weber, Max (1978) *Economy and Society An Outline of Interpretive Sociology* (transl. by G. Roth and C. Wittich). Berkeley-Los Angeles-London: University of California Press, p. 903.

<sup>8</sup> Rousseau, Jean-Jacques (1968 [1762]) *The Social Contract* (translated and introduced by Maurice Cranston). London: Penguin Books, Book IV, chpt. 8, p. 179.



God”<sup>9</sup>. But this kind of connection of religion with the polity has also severe defects. It makes religion “exclusive and tyrannical, and makes a people bloodthirsty and intolerant, so that men breathe only murder and massacre, and believe they are doing a holy deed in killing those who do not accept their Gods. This puts the people concerned into a natural state of war with all others, and this is something destructive of its own security”<sup>10</sup>.

This latter argument foreshadows John Stuart Mill’s essay on Utility of Religion (first published posthumously in 1874, in a time of deep religious skepticism) which focused on the social function of religion rather than on its inherent truth<sup>11</sup>. Still, Rousseau deals with the problem that in the minds of the citizens religion does contain indubitable truths which call for a particular conduct that may conflict with the common good of the polity community. Not surprisingly, in this conflict Rousseau takes sides with the polity. This is why he strongly disapproves of the apolitical character of the Christian religion which teaches that all men are brothers (and sisters). Its universalist humanitarianism lacks the specificities which tie people together to particular communities with particular duties of social solidarity and coherence. Moreover, “far from attaching the hearts of the citizens to the state, this religion detaches them from it as from all other things of this world” which according to Rousseau is “contrary to the social spirit”<sup>12</sup>.

However, the solution which Rousseau offers as a way out of the defects of the two opposite patterns of relating religion and politics to each other (as he understands them) – the theocratic model (strongly associated with the Islam) and the Christian model of an apolitical ethics of universal brotherhood – is inconsistent. He proposes the concept of a civil religion,

“a profession of faith which is purely civil and of which it is the sovereign’s function to determine the articles, not strictly as religious dogmas, but as expressions of social conscience, without which it is impossible to be either a good citizen or a loyal subject. Without being able to oblige anyone to believe these articles, the sovereign can banish from the state anyone who does not believe them; banish him not for impiety but as an antisocial being, as one unable sincerely to love law and justice, or to sacrifice, if need be, his life to his duty”<sup>13</sup>.

At a first glance this civil religion seems to be a purely secular catechism of the citizens’ social and political duties which leaves their spiritual commitments untouched. But this is not the case. Although Rousseau asserts that the sovereign has no business to take cognizance of the religious opinions of the citizens, he makes the exception for those religions whose “dogmas concern morals and the duties which everyone who professes that religion is bound to perform towards others”<sup>14</sup> – but this is exactly at issue. A religion which does not refer to the social life and which therefore is irrelevant for the individuals’ duties to loyalty cannot conflict with the polity; it is neither a political nor a legal nor a theological problem. All monotheistic religions clearly have important ramifications for the polity and its members<sup>15</sup>, and therefore Rousseau’s generous grant of religious freedom of the citizens of his polity is worthless for exactly those cases for which his civil religion should provide a solution. His secular catechism does not exclude conflicts with the commands of a particular religion, and what he suggests is pure and simple supremacy of the secular over the spiritual loyalties. It forces the citizens to ignore their religious beliefs in their social and political conduct, even if

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<sup>9</sup> Ibid. p. 182.

<sup>10</sup> Ibid. p. 182.

<sup>11</sup> Mill, J. St. (1998) *Three Essays on Religion. Nature. The Utility of Religion. Theism*. Amherst, New York, USA: Prometheus Books, pp. 69-122.

<sup>12</sup> Ibid. p. 182.

<sup>13</sup> Ibid. p. 186.

<sup>14</sup> Ibid. p. 185 f.

<sup>15</sup> Even the apolitical Christian religion is, according to Rousseau, by this very fact antisocial and hence hostile to the needs of a good polity.

the loyal observation of the religious duties in the society is the precondition for the mercy of God and for the gratifications in their eternal life. Moreover, Rousseau's civil religion is less civil and secular than one would expect. Elaborating on its principles, he mingles social and spiritual duties, including "the existence of an omnipotent, intelligent, benevolent divinity that foresees and provides; the life to come; the happiness of the just; the punishment of the sinners; the sanctity of the social contract and the law..."<sup>16</sup>. This is tantamount to expelling all true believers of one of the established religions out of his polity. In other words, Rousseau's civil religion is not the solution, but the problem.

## V.

### [preliminary notes]

The subordination of religion to the requirements of the sovereign state was the starting point of a development which eventually lead to a variety of constitutional models about the relation between religion and politics. There is a long history of struggles for the liberation of religion from its absolutist state tutelage. Rather than recapitulating the different narratives of the diverse national histories I shall restrict myself to the reconstruction of the principles which rule the relationship between religion and politics in the framework of a liberal democracy. It may help us to find theoretical ground for the understanding of this relationship in polities which are not liberal democracies.

Generally, there are three principles which determine the relation between religion and politics in a liberal democracy<sup>17</sup>:

1. The individual fundamental right to religious freedom: each individual has the right not to be subject to the state's regulation or even coercive intervention with respect to his or her religious attitude. This includes the right to believe or not to believe, to express one's belief both in private and in public, to display its symbols and rituals, to found and maintain religious associations. This right excludes both the state's prohibition of any kind of religious belief or, reversely, its imposition of a religious belief upon the individuals.
2. The principle of equal citizenship: the rights and duties of citizenship, in particular the access to public office, are independent of a person's religious belief; this principle includes both the members of the diverse religious communities and the non-religious.
3. The use of the coercive power of the state must not be justified by religious arguments. Since the state is a coercive association which comprises members of different, often hostile religious communities and non-religious individuals it must establish its power which can be accepted by all citizens irrespective of their religious attitude. In other words, it must have a secular fundament.
4. Given the social fact of religious plurality as a characteristic of modern societies – a characteristic which is largely encouraged by the principle of religious freedom mentioned above – the state must not identify with any of them and keep a position of neutrality towards them.
5. The members of the society must be able and willing to accept religious diversity – an attitude which we normally call tolerance.

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<sup>16</sup> Rousseau Social Contract, IV/8, p. 186.

<sup>17</sup> See Audi, Robert (2000) Religious Commitment and Secular Reason. Cambridge, New York, Melbourne, Madrid: Cambridge University Press, pp. 31 ff.