

Does Europe Need Neutrality?
The Old Continent in Search of a Public Philosophy

Andrea Pin

Introduction

some of the most relevant features of the protection of religious freedom in Italy and to place them in the broad context of the European legal culture.

the Italian model of human rights' protection is somewhat successful but it is threatened by a too rigid equalitarian approach, which can be found at the domestic as well at the supranational levels.

A benevolent country

Crucifix I and II

Lautsi II: a benevolent approach

"Italian law currently conferred the right to wear Islamic headscarves and other apparel or symbols with a religious connotation; the beginning and end of Ramadan were often celebrated in schools; religious instruction was permitted for all recognised creeds; and the needs of pupils belonging to minority faiths were taken into account, with Jewish pupils, for example, being entitled not to sit examinations on Saturdays."

The public presence of Catholicism is weighted against non-Catholics' religious freedom. The European Court of human rights, it seems to me, said that a state doesn't need to give up with its identity, in order to address new or minoritarian religious needs.

And this is lesson one: a State doesn't need to liquidate its religious tradition, but can expand the protection of human rights to religious groups others than the traditional ones.

There is no perfect identification between the state-religion relationship and the state-religious freedom relationship. One state can have a benevolent approach without abandoning its own tradition.

The benevolent approach depends also on state-religion agreements.

The agreement between the State and the Latter Days' Saints is a recent proof of this, by the way.

taxpayers can give a small part of their income taxation to their church; they can have spiritual counseling while they are hospitalized, or held in jail, or serving in the army. They have their religious institutions protected, their university degrees officially recognized.

But the state-religion agreement is just one of the reasons for this benevolent approach. Islamic headscarves – as well as Jewish kippah, for instance – are welcomed independently from state-religion agreements. The judicial practice and the doctrine converge on this aspect. Ramadan is celebrated upon autonomous decision of each school.

Benevolent doesn't mean optimal.

1. The character of the recent agreements, which are almost a copycat of the very first ones.

The agreements are not only repetitious. They are also elusive.

2. Italian institutions are reluctant to strike a balance *between religion and human rights, when they can conflict*. *Uncomfortable solutions, such as blood transfusions' prohibition amongst Witnesses of Jehovah was ignored in drafting the agreement with the State – and an agreement with Islam is not at the horizon, precisely because of the hard topics that would need to be addressed.*

Lesson 2

How could we define such state-religion relationship?

“Neutral”?

neutrality is a concept that is oftentimes used by Italian Constitutional Court and the ECourtHR.

Neutrality has become a common currency in European state and supranational jurisprudence. But does neutrality help understanding the protection of Human Rights, including Religious Freedom, in Europe?

Let me give you some examples in which the European legal culture has used the idea of

“neutrality”:

- ruled out Muslim visible signs at schools and the complete Muslim veil in the public square in France
- legitimized the prohibition of the veil – and of the hijab - in French schools and in Turkish cases
- influenced the ruling out of minarets in Switzerland at a federal constitutional level

Let us now go back to the excerpt I mentioned before:

“Italian law currently conferred the right to wear Islamic headscarves and other apparel or symbols with a religious connotation; the beginning and end of Ramadan were often celebrated in schools; religious

instruction was permitted for all recognised creeds; and the needs of pupils belonging to minority faiths were taken into account, with Jewish pupils, for example, being entitled not to sit examinations on Saturdays.”

So, if the ECHR has named this approach as “benevolent”, how would the ECHR name its own legitimization of French and Turkish prohibitions? A “malevolent” approach? Can we have benevolent as well as malevolent neutrality, with the ECHR blessing both of them?

This was **lesson 2: neutrality doesn’t really explain the attitude that the state is expected to have towards human rights.**

Why is the European Legal culture using such a conceptualization like “neutrality”, which lends itself to so different attitudes towards religious freedom?

This is the second part of my paper – **and lesson 3** - in which I argue that **the European legal culture is actually trying to shape a relationship between state and religion**, instead of simply a state and human rights relationships’ model. **And this happens because Europe is looking for a collective religious identity.**

The Framing of Art. No. 9

Actually, at the time the convention was framed, many European countries couldn’t call themselves neutral at the time the Convention was drafted. And this is still true with regards for many countries. England has Anglicanism as the established church, and the United Kingdom on the overall has an even more diverse landscape of established religions; Greece is formally Orthodox; the vast majority of the Scandinavian countries has or used to have an established church; Italy went through a long way before leaving the establishment behind its shoulders, in 1984; Ireland is Christian from its very Constitutional preamble.

The Equivocal Use of “Neutrality” in the ECtHR’s decisions

Neutrality wasn’t included in the Convention; but it was later implemented by the ECtHR. Several, pivotal cases that the ECtHR has decided maintained that religious freedom is undoubtedly an “asset” for democratic societies, and not just for believers, and has repeatedly stated that religious freedom commands the state keeps a neutral approach, where **“neutrality” is oftentimes placed alongside religious “pluralism.”**

The problem with this case-law is that it is hardly useful to interpret the Convention.

A. It doesn’t have a truly explanatory role in interpreting, as we have seen

B. The Opposition to the Use of “Neutrality” made by the ECtHR

Lautsi I ignited a hot struggle between what had been decided and a vast number of countries that criticized the decision and joined Italy in the appeal before the Grand Chamber. Interestingly, almost all the countries that supported the appeal were East-European: “neutrality” literally divided Europe, on that occasion.

C. The Secular-Christian European Union Debate

Another field of study can be helpful in trying to explain the influential, but critical, role of “neutrality” in the European legal discourse.

Why European Legal Thinking is Trying to Enforce Neutrality: The Quest for a European Identity. This is the core of my paper.

It seems to me that “neutrality” keeps popping up in the case-law of the ECtHR’s and in some domestic Courts’ decisions as well as in the debate about the historical and philosophical roots of Europe because the European legal culture is **in search of a *founding myth*** for its public philosophy and for its identity.

What does constitute a European identity, with regards to religion? I am not simply talking about religion and human rights in Europe: Europe has been enforcing HR without having a clear model in mind. I am talking about the relationship between religion, public institutions and human rights.

Now I can turn to the following question: is “neutrality” the only available answer? We should ask ourselves if there are alternatives, since “neutrality” doesn’t respect several states’ constitutional traditions, nor does it respect the EConventions’ wording; finally, it is not useful to interpret Convention’s HR.

The Survival of the post-Westphalian Europe and the Insufficiency of Religious Pluralism

Had the European legal culture looked for a substitute of “neutrality,” would they have found a real alternative in **“religious pluralism”**? After all, “neutrality” has oftentimes accompanied “religious pluralism,” at least in the ECtHR’s case-law.

OF course “religious pluralism” doesn’t express European states’ identities easily.

two reasons play against this identifying power of “religious pluralism,” amongst European states.

The first reason is demography: it is not easy to plainly maintain that European states are religiously plural.

There is surely a multiplication of faiths and of ways in which religiosity is expressed, virtually in any state. But states are not religiously plural, as a matter of fact. Many of them are mainly composed of a vast religious majority, which is surrounded by a number of other small religions and by an increasing number of secularized people, who don't embrace any faith. Actually, if one considers the majoritarian religions that populate Europe, they are still distributed along Westphalia-Peace lines. "Religious pluralism" would still reflect more a project and a state's attitude, rather than a description of the current status of Europe.

The second reason for which "religious pluralism" is believed not to work is that European states were raised upon rather religiously homogenous peoples. Even the recent dissolution of Yugoslavia has taken place along religious lines. Cyprus is divided into two both nationally and religiously. Irish recent painful memories reflect a religious pluralism that led to conflicts, before leading to peace. European history seems to teach that there should be a relationship between the state, the population and a specific religion, in order to preserve domestic peace and human rights. Does "neutrality" lack any alternative, then?

Conclusion

I can here just allude to a possibility that is available.

I think that if Europe stops calling itself "neutral," and starts calling itself "plural," this would benefit both Europe and the State.

Religious pluralism cannot play an integrating role as religions did in shaping modern European states. But the European identity is not to be compared to state's identity. Europe is new, in this respect. It was born out of peoples that didn't want to annihilate each other in the name of a specific identity or national sovereignty. They wanted to be inclusive and therefore avoided to cut each other identities' out. Europe needs a new understanding of its relationship with religion because it needs an understanding of itself as being something different from states. "Religious pluralism" could be part of the fabric of the European identity Europe is looking for: European religious pluralism, as a concept, can describe the continental identity, without conflict with religiously based states' identities.

If so, then also states can learn from it. They were born out of religious crucibles, but are facing growing secularizations and immigrations: perhaps they could prospectively look at Europe to

draw inspiration to adjust their identity to new demands of inclusion coming from cultures they weren't familiar with. If Europe is able to take "religious pluralism" on as part of its own identity, then perhaps states can learn and imitate it.

If not, Europe and states will probably enforce rights and political agendas based on a selective "neutrality," which doesn't really incorporate "religious pluralism." And this will be at the expense of both old and new religions, as well as of religious freedom.