CIVIL RELIGIONS: MODELS AND PERSPECTIVES

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I. INTRODUCTION

A few years ago, Peter Berger, Grace Davie, and Effie Fokas published a book entitled *Religious America, Secular Europe?* The authors briefly mention civil religion, noting that this concept originated in Europe, was developed in the United States during the 1960s, and returned to Europe in the 1990s. This timeline reveals that the U.S. debate on civil religion began at a time of the civil rights movement and the Vietnam War, a time when the national covenant had been broken (to quote the title of a famous book by Robert Bellah, a renowned scholar of civil religion) and resurfaced in Europe when immigration from Asia and Africa raised the question of the identity of Europe and of its constituent nations. In both cases, the notion of civil religion had something to do with the search for a nucleus of values able to create a cohesive group of individuals. When a particular religion or culture cannot perform this unifying role, civil religion takes its place by providing a set of values, symbols, and rituals upon which the spiritual unity and social cohesion of a nation can be rebuilt.

This cluster of historically rooted values and principles constitutes the framework within which national identity is redefined, thus allowing changes to take place without breaking too sharply from the past. At the same time, these values and principles distinguish between those who are full citizens and those who are only

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3. BERGER, DAVIE & FOKAS, supra note 1, at 45.

4. BELLAH, THE BROKEN COVENANT, supra note 2, at 3.
“legal” citizens. In this way, civil religion links itself to citizenship and provides content for its identitarian dimension.\footnote{According to Christian Joppke, citizenship has three dimensions: [C]itizenship as status, which denotes formal state membership and the rules of access to it; citizenship as rights, which is about the formal capacities and immunities connected with such a status; and, in addition, citizenship as identity, which refers to the behavioral aspects of individuals acting or conceiving themselves as members of a collectivity. Christian Joppke, Transformation of Citizenship: Status, Rights, Identity, in Citizenship Between Past and Future 36, 37 (Engin F. Isin, Peter Nyers & Bryan S. Turner eds., 2008). Civil religion is connected in particular to the last dimension of citizenship.}

Implicit in this idea of civil religion is the notion that “full” citizenship is not only a matter of status and rights, but also of shared values. For instance, being a good citizen not only means refraining from committing crimes; it also entails sharing a common narrative, partaking in some foundational myths, and developing a sense of belonging, solidarity, and commitment.\footnote{The emotional dimension of citizenship emerges clearly in the formula of the U.S. oath of allegiance for naturalized citizens: I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic . . . ; and that I take this obligation freely without any mental reservation or purpose of evasion; so help me God. U.S. Citizenship & Naturalization Servs., No. M-476, A Guide to Naturalization 28 (2010).}

This Article starts from the assumption that, in the long run, a citizenship based only on the cold exchange of rights and obligations is not viable; something more, capable of warming the hearts of citizens, is required.\footnote{Tariq Modood underlines that the status and rights dimensions of citizenship are necessary “in the way of skeleton to a living body” to sustain the “all wider meaning of citizenship,” which includes its identitarian dimension. Tariq Modood, Multiculturalism, Citizenship and National Identity, in Citizenship, supra note 5, at 117.} From this perspective, rights and obligations are the starting point of a longer and more complex process, which can extend for more than one generation. While the development of this process requires time, its direction must be clear from the beginning. Otherwise, we risk going in the opposite direction and drifting away from our goal. Therefore, it is important to consider the following questions. Is civil religion a helpful tool for building full and responsible citizenship? If so, what kind of civil religion can best perform this task?
II. Four Patterns of Civil Religion

Although Bellah has written about a world civil religion, most scholars focus on civil religion at the national level and study it as a component of national identity. This Section addresses the civil religions of a number of nations, namely France, Italy, and the United States, as well as the civil religion of Europe. These civil religions are discussed as ideal types. It is important to acknowledge that none of them exist in reality in such a “pure” state though. These ideal types mark the borders of the playing field, but they are unable to explain the complexities and intricacies of the game once it has started.

A. France, or Laicité as Civil Religion

Civil religion has many facets. One of them is the sacralization of secular concepts and symbols that become the axis around which political and civil society is organized. This facet is reflected in France’s concept of laicité, which is conceived as the general principle that includes and reconciles the particular values of the religious, racial, ethnic, cultural, and political communities living in France. Laicité is seen as a cluster of universal and abstract values—such as liberty, equality, and tolerance—that every citizen and group must embrace independently from his or her origins, preferences, and belongings. Citizenship is built around these values that are “at the heart of [France’s] republican identity.” Consistent with this approach, the contract of “accueil et intégration”:

8. See the discussion of a “world civil religion” contained in Bellah, Civil Religion in America, supra note 2, at 18; see also Robert N. Bellah, Can Christianity Contribute to a Global Civil Religion?, in Christianity and Human Rights: An Introduction (John Witte, Jr. & Frank S. Alexander eds., 2011).


10. The concept of an ideal type was developed by the German sociologist Max Weber: “an ideal type is formed by the one-sided accentuation of one or more points of view” according to which “concrete individual phenomena . . . are arranged into a unified analytical construct.” Max Weber, The Methodology of the Social Sciences 88 (Edward A. Shils & Henry A. Finch eds. & trans., 1997). Although it cannot be found empirically anywhere in reality, an ideal type is a helpful tool for analyzing social phenomena. Id.


12. “Accueil et intégration” means “welcome and integration.”
that each immigrant has to sign when entering France lists laïcité, together with democracy and equality, among the non-negotiable values on which the French Republic is founded.

This secular conception of civil religion impacts the relationship between the state and religion. For example, in the field of education, the curricula of French schools (with the exception of schools in the regions of Alsace and Moselle) include neither a teaching of religions nor a teaching about religions. This is unusual, as all the EU states and almost all European countries include this teaching in school curricula as a compulsory or optional subject. At the European level, France is leading the fight against the so-called new religious movements: it enacted a law and created a governmental body to combat the sects and the “derive sectaires.” Additionally, France has taken a clear-cut position in the field of religious symbols by passing a law that prohibits students from wearing religious symbols that are too conspicuous in school. France is the only EU country that has taken this path.

There appears to be a link between the secular conception of civil religion prevailing in France and the country’s legal and political choices. If national identity has to be built around the notion


14. Teaching about religions is intended to promote the study and knowledge about different religions and is distinguished from instruction in a specific religion. This distinction is clearly formulated in Office for Democratic Insts. and Human Rights, Org. for Security and Co-operation in Europe, Toledo Guiding Principles about Religions and Beliefs in Public Schools 20 (2007) [hereinafter Toledo Guiding Principles].

15. On the teaching of religion in French schools, see Jean-Paul Willaime, Teaching Religious Issues in French Public Schools: From Abstentionist Laïcité to a Return of Religion to Public Education, in Religion and Education in Europe: Developments, Contexts and Debates 87 (Robert Jackson et al. eds., 2007). For more information about religious education in Europe, see Religious Education in Europe: Situation and Current Trend in Schools 71–75 (Elza Kuyk et al. eds., 2007).


18. On this issue, see generally John R. Bowen, Why the French Don’t Like Headscarves: Islam, the State, and Public Space (2006).
of laïcité, “it is the role of the state to create laïque citizens” by educating them about the values of laïcité and shielding them from the competing values upheld by religions. This attitude explains the exclusion of the teaching of religion from school curricula, the prohibition of wearing religious symbols at schools, and the need to protect citizens from the threat to freedom posed by the new religious movements.

How much this conception of civil religion can cope with the two driving forces that are changing the European religious landscape—the increasing plurality of religions and their growing public character—is open to discussion. The weakest point of the French pattern is the assumption that not only the state and its institutions, but also society and politics, have to be independent from particular traditions and conceptions of life. To attain such a goal these traditions are to be pushed to the margins of public life. Yet, privatization of religion is met with growing resistance on the part of many of the historical religions of Europe and is rejected by a consistent part of the immigrant communities, especially those that come from countries where law and politics are intermingled with religion.

B. Italy, or Catholicism as Civil Religion

The central core of the Italian pattern is the attempt to govern the ethical, cultural, and religious plurality of the country through the values of Catholicism, raised to the rank of civil religion. More precisely, Catholicism supplies the cultural and ethical principles on which full citizenship is based. Provided they are ready to accept this condition, non-Catholics can fully enjoy religious freedom rights (although not religious equality rights). Governing diversity by stressing Catholic identity is the narrow and arduous path Italy is trying to follow.

19. BERGER, DAVIE & FOKAS, supra note 1, at 76.

20. On these transformations, see Silvio Ferrari, State Regulation of Religion in the European Democracies: the Decline of the Old Pattern, in RELIGION AND DEMOCRACY IN CONTEMPORARY EUROPE 103–12 (Gabriel Motzkin & Yochi Fischer eds., 2008).


22. This project was expressed by the president of the Italian Episcopal Conference, Camillo Ruini, on February 11, 2005. Camillo Ruini, President, It. Episcopal Conf., Quale spazio per il cristianesimo nella nuova Europa [Is There Room for Christianity in the New Europe] (Feb. 11, 2005), available at http://chiesa.espresso.repubblica.it/articolo/23170.
The debate about the crucifix is the best example of the Italian interpretation of civil religion. In Italian public schools, a crucifix must be hung on the walls of every classroom. Faced with requests to remove it, the courts have stated that the crucifix is not only a religious symbol but also the symbol of Italian identity. In particular, it manifests the historical and cultural tradition of Italy and is a sign of a value system based on freedom, equality, human dignity, and religious tolerance. Because citizenship is founded on these same values, which should be respected by everyone, the presence of the crucifix in the classroom cannot be made dependent on the religious convictions of the students. These decisions express in legal terms the idea that only the Catholic tradition can be the civil religion of Italy, and provide the set of fundamental principles and values on which social cohesion is founded. This idea is supported by a large part of the Catholic hierarchy, the governing political coalition, and public opinion.

A closer examination of the civil religions of France and Italy reveals the different impacts that the two have on the church-state system. In Italy, it is compulsory to teach Catholicism in public schools in the sense that the state is obligated to provide it and the students or their parents can decide whether the student will attend Catholic religion classes. Other religions may be taught, but only upon the request of the students or their parents. Furthermore, unlike teachers of Catholicism, teachers of other religions


24. Recently, the Council of State took a step forward and declared that the crucifix is the symbol of the Italian model of laïcité. See Cons. Stato, 13 febbraio 2006, n. 556, available at http://www.olir.it/documenti/index.php?documento=3517. According to the Council of State, in Italy the principles that are at the base of the idea of laïcité have a religious origin. Id. Thus, the best way to manifest the secular character of the Italian school is through the crucifix in the classroom. Id. This conclusion does not mean that the crucifix is deprived of its religious significance. Id. But, according to the Court, it has a different meaning depending on the place where it is situated. Id. When the crucifix is placed in a church or another place of worship, it is only a religious symbol. Id. When it is placed in a school, it becomes a tool for educating students—indeed independently from their religious beliefs—about values that are at the core of the notion of laïcité, such as tolerance, mutual respect, human dignity, human solidarity, and non-discrimination. Id.

25. The courts went even further, noting that the fact that a growing number of non-Christian students are attending Italian schools underlines the need for the crucifix because it propagates the principles of respect for diversity and refusal of radicalism (both religious and secular) that are at the foundation of the Italian legal system and that may not be familiar to students of other cultures and religions. TAR Veneto, 17 marzo 2005, n. 1110, available at http://www.olir.it/documenti/index.php?documento=2075.
are not paid by the state. In Italy, there is no specific law concerning new religious movements nor an official institution charged with controlling or combating them: but these movements are far from enjoying the same legal status other religious communities have, and up to now, only religions of the Judeo-Christian group have been able to conclude agreements with the Italian State. Finally, the symbols of minority religions—such as the Islamic headscarf, the Jewish kippa, or the Sikh turban—are not a matter of concern in the Italian schools. Instead, political and cultural debates have focused on the symbols of the majority religion. For instance, when Catholic symbols were threatened almost everyone, from the President of the Republic to the Prime Minister, felt compelled to utter a public outcry in defense of these symbols.

To a certain extent, minority religions are sheltered by Catholicism against the harshness of the laïcité à la française and can benefit from the dominant position of Catholicism in Italian society. Nevertheless, there is a price to pay for that: non-Catholic religious communities can integrate themselves in Italian society only through accepting Catholicism’s dominant position as the civil religion of the country. The Italian media made this point clear in response to the Archbishop of Canterbury’s suggestion to give the sharia some place in the English legal system. Commenting on his proposal, the Italian Catholic press stated as follows: “rather than trying to defend religion through the guise of secular multiculturalism, the Archbishop of Canterbury should have been defending religious pluralism through Christianity” because “only Christianity can integrate other religions into a shared European project . . . . Paradoxically, what other faiths require for their proper recognition is the recovery of the indigenous European religious tradition—Christianity.”

In conclusion, the Italian pattern is based on the gamble that citizenship and social cohesion

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27. See id. at 214–17. An agreement was signed with the Buddhist community in 2000, but Parliament has not yet enacted the law required for its application. See id. at 212.
30. Phillip Blond & Adrian Pabst, A New Kind of “Laïcité ” To Integrate Islam in the West, OASIS, Apr. 1, 2008, http://www.oasiscenter.eu/node/4981. Oasis is a journal founded by the cardinal Angelo Scola, the Patriarch of Venice, and one of the most influential personalities among the Italian bishops.
can be built around a particular religious and cultural tradition. In the short term, this strategy may work, yet nobody knows how long it will be able to face the challenge of a growing immigration of non-Christian communities.

C. The United States, or the Non-Denominational Civil Religion

From the “Old Continent” perspective, the core of the American pattern is a non-denominational civil religion, based on the idea that religion can play a helpful public role by fostering republican virtues. It differs both from the French model, where religion has little public relevance, and from the Italian model, where the public role of religion is monopolized almost exclusively by Catholicism. This distinctive characteristic of American civil religion emerges clearly in the American version of the separation of church and state. Separation is an essential feature of the American model of civil religion, as it precludes state cooperation with one religion or even a selected group of religions. Moreover, separation prevents the unequal treatment of religions that characterizes the Italian church-state system. Yet, the American version of separation cannot be confused with the French one. While it prevents the teaching of religion in public schools, it does not prohibit the teaching about religions, it does not ban wearing religious symbols in public institutions, and it does not have an aggressive policy against new religious movements. Separation is confined to the relationship between church and state and does not affect the interaction of religion, politics, and society. A distinct conception of what is public and what is private explains this differ-

31. “The idea that religion is the basis of public morality, and so the indispensable underpinning of a republican political order, is a constant theme from Washington’s Farewell Address to the present.” Bellah, The Revolution and the Civil Religion, supra note 2, at 60.

32. On the meaning of “teaching about religions,” see generally Toledo Guiding Principles, supra note 14.


35. In his first work on civil religion, Bellah emphasized that the “separation of Church and State has not denied the political realm a religious dimension.” Bellah, Civil Religion in America, supra note 2, at 3.
while in Europe the “public” tended to be monopolized by the state, and only recently has this trend been (partly) reversed, the United States is characterized by the existence of a broad public area where non-state actors like religious communities can operate and prosper.37

Unlike the civil religions of other countries, the American model’s main challenge is building a coherent and functioning civil religion from different religious (and non-religious) sources. As long as civil religion was based on the values of a specific majority denomination (Protestantism) or religion (Christianity) or parent religions (Judeo-Christianity), it worked and was able to build a people out of a number of immigrant communities. In fact, some think that this model can be stretched to include Islam and support the idea of an Abrahamic civil religion. Nevertheless, the growing number of non-believers and followers of non-monotheistic religions call into question the continuing vitality of the American civil religion. Specifically, it is difficult to foresee how non-believers and followers of non-monotheistic religions can be incorporated in the arena of full citizenship if it is crowded with symbols that are not theirs. The American model thus seems to be faced with an impossible dilemma between inclusion and efficacy. The growing religious plurality of American society pushes to enlarge the borders of the American civil religion, but this enlargement is bound to dilute its content.38 Many may wonder whether American civil religion has reached its end point.

D. The European Union, or the Nonexistent Civil Religion

Unlike France, Italy, and the United States, it is much more difficult to speak seriously of a civil religion of the European Union. On the one hand, politically speaking, the European Union is too weak to build its own secular civil religion. On the other hand, there is no consensus about the foundation of a “religious” civil religion of the European Union. There is no consensus about the foundation of a “religious” civil religion in the European Union. In 2003, a proposal that would have recognized Christianity (or

37. The explanations for this difference are well known, so this Article will not take the time to examine them analytically. On the difference between Europe and the United States, see id.
Judea-Christianity) as the civil religion of Europe was rejected.\textsuperscript{39} The different patterns of civil religion adopted in the EU member states—not only the French and Italian ones but also those of the Nordic\textsuperscript{40} and the Orthodox\textsuperscript{41} countries—prevent the adoption of a uniform civil religion by the European Union.

\textbf{III. THE TRENDS AND THE SCENARIOS}

As previously mentioned, the French, Italian, and American civil religion models are ideal types that do not exist in their “pure” states.\textsuperscript{42} Moreover, these models are not static but are quickly changing under the pressure of the “public” plurality of religions. President Nicolas Sarkozy’s references to “positive” laïcité\textsuperscript{43} show that the exclusion of religion from the public sphere is no longer a dogma officially supported by the French government.\textsuperscript{44} Likewise, thirty years ago, the Italian legal system was much less open to minority religions than it is now, after the state and a number of non-Catholic religious communities signed cooperation agreements that gave them some advantages previously reserved for the Catholic Church.\textsuperscript{45} In the United States, a string of U.S. Supreme Court decisions—starting with the prohibition of prayers at the beginning of the school-day—have reinterpreted the First Amendment in a way that tends to limit religious activities in schools, thus


\textsuperscript{40.} See generally the contributions collected in \textit{Law and Religion in the 21st Century – Nordic Perspectives} (Lisbet Christoffersen et al. eds., 2010).


\textsuperscript{42.} See supra Part II.


\textsuperscript{44.} Even before his election, the creation of the “Institut européen de sciences religieuses,” financed by the state and in charge of training state school teachers about the place and role of religion in contemporary society, went in this direction. See generally Willaime, supra note 15. The same can be said for the (still timid) adjustments in the mission of MILIVUDES. In 2002, the “Observatoire interministériel sur les sects” changed its name and became “Mission interministérielle de vigilance et de lutte contre les dérives sectaires” (MILIVUDES). This change has been read as an indication of a more balanced approach to the issue of new religious movements.

\textsuperscript{45.} On this openness (and its limits), see Silvio Fettari, \textit{States and Religious Communities in Italy, in Church and State towards Protection for Freedom of Religion} 218 (H. Kobayashi ed., 2006).
approaching the French model.46 Nevertheless, these transformations do not clearly address whether civil religion has a future.

Some assert that civil religion does not have a future, reasoning that civil religion has become useless because religious plurality makes it unlikely to work “as the social and political unifier that civil religion is supposed to be.”47 In such conditions, the survival of liberal democracy does not depend on a strong civil religion, but “on the development of thin, procedural values, which permit individuals to pursue their own conceptions of the good so long as they do not interfere with that pursuit by others.”48 But the coldness and individualism of these procedural values make them unable to create the solidarity, commitment, and feeling of belonging required by a full citizenship.

To meet the challenge of pluralism, others advocate for the idea of a world civil religion that “would draw on religious traditions beyond the sphere of Biblical religion alone”49 and would consist of a “set of symbolic forms” able to forge “a new global cultural consensus on issues of the environment, human rights, and social justice.”50 The national civil religions would not disappear, but rather become components of this global civil religion, whose development depends on the successful negotiation of “some kind of viable and coherent world order.”51 Bellah wrote this passage more than forty years ago, but the attainment of this goal does not look any closer now than it was then. The existence of a global market, a global system of communication, and a global economy does not mean that there is a global civil society able to generate civil religion. In this situation, urging a global civil religion could appear to be a way to escape from the problems faced by national civil religions.

We cannot ignore the strength of the link between civil religion and the national state, but we should be aware that the Westphalian state is no longer a viable model even in its birthplace, Europe.52 National states are no longer the same. Moreover, the

46. See Berger, Davie & Fokas, supra note 1, at 72–80. This trend is, however, vigorously opposed by conservative Christians who want to restore a more narrowly Christian model of civil religion. See generally Frederick Mark Gedicks & Roger Hendrix, Uncivil Religion: Judeo-Christianity and the Ten Commandments, 110 W. Va. L. Rev. 275 (2007).
47. Gedicks & Hendrix, supra note 46, at 304.
48. Id. at 305.
49. Bellah, Civil Religion in America, supra note 2, at 18.
50. Bellah, Can Christianity Contribute to a Global Civil Religion?, supra note 8.
51. Bellah, Civil Religion in America, supra note 2, at 18.
world seems to be experiencing dissociation between law and love. While the state still provides an unsurpassed legal framework for its citizens’ lives, much stronger than that provided by transnational and international organizations,\(^53\) many states are no longer nations in the sense that they have lost the ability to create the emotional commitment that once characterized the national state.\(^54\) Immigration and globalization have put an end to the identification of state and nation described by Hanna Arendt at the beginning of the 1950s.\(^55\) Today, states host within their borders many nations, constituted by different cultural, ethnic, religious, linguistic, and racial communities that are taking the place of the nation as the *locus* of belonging, commitment, and solidarity. This explains why civil religion cannot work anymore as a factor of social cohesion as long as we have the pretension of creating it at the national level.

According to Robert Cover, a U.S. lawyer, everyone lives in a normative universe, which Cover defines as “a world of right and wrong, of lawful and unlawful, of valid and void.”\(^56\) Religious communities are a good example of these normative worlds; they are the places where new legal meanings are created through the personal commitment of the community members who apply their will to transform the “extant state of affairs” according to their “visions of alternative futures.”\(^57\) But, the coexistence of different legal worlds requires a system-maintaining force, which Cover identifies by Claus Leggewie, the Westphalian State, based on the principles of territorial sovereignty and religious homogeneity, has been weakened by immigration and globalization: "we have now entered the ‘post-Westphalian era’ of globalized religion. The world market has made territorial borders more fluid, resulting in millions of new labor migrants. These migrants have formed diaspora communities, and brought with them their religions." Claus Leggewie, *Blinded by the Light*, IP G LOBAL, Winter 2008, at 90–94.

53. See Robert Jackson, *Sovereignty: A Changing but Persisting Idea*, 6 QUADERNI DI RELAZIONI INTERNAZIONALI 4, 11 (2007). The strength of the national state framework was once more evidenced by the recent crisis of the financial markets. Although the crisis was global, it received national answers. Each state tried to find its own way out of the crisis, with a minimum of international coordination.

54. Michael Howard underlines that “the kind of patriotism that enabled the peoples of Europe to endure two world wars now appears as archaic as the feudal loyalties that it had displaced.” MICHAEL H OWARD, T HE I NVENTION OF  P EACE: R EFLECTIONS ON  W AR AND INTERNATIONAL ORDER 100 (2000).


57. *Id.* at 9. It is not an eschatological or utopian appeal; Cover underlines that pointing at the future is not enough to generate commitment, belonging, and solidarity if there is no conscious effort to build a bridge linking today’s reality and this alternative future. *Id.* The responsibility of these normative communities to take on the present world, which is made of a plurality of competing universes, includes the acceptance of some fundamental rules that make a peaceful coexistence possible. *Id.*
in the “universalist virtues” of liberalism, embodied in the modern state.\footnote{58} Without them, these legal worlds “would be unstable and sectarian in their social organization, dissociative and incoherent in their discourse, wary and violent in their interactions.”\footnote{59} In other words, normative communities cannot flourish without the state legal framework.

Although it is difficult to fall in love with a legal framework, it is possible to recognize that its existence is a matter of common interest,\footnote{60} as normative communities cannot flourish without it. Therefore, while states should make room within their legal systems for the communities where belonging and commitment can be found, states should also recognize that they need the legal framework because it provides the rules governing the playing field where they live and compete. This issue of rules is controversial. On the one hand, rules cannot be directly derived from the normative communities (as defined by Cover\footnote{61}) because they would not be sufficiently inclusive. On the other hand, the rules cannot be completely detached from the normative communities, as only the normative communities are able to provide the values on which rules are based. It is important to understand that no playing field is absolutely neutral and, for this reason, the best way to deal with this dilemma is to reduce the playing field’s rules to the minimum required for a fair game.

Two conditions have to be respected by all social actors, including religious actors, who want to take part in the process of the formation of laws that apply to the whole community. The first condition excludes accepting statements based on a direct and exclusive reference to the will of God as an element of the public debate aimed at taking binding decisions. For example, social actors cannot oppose abortion or euthanasia by affirming that God is against these things. Although an individual may be convinced of that personally, in the public forum one must support this persuasion with arguments that can be understood by the whole community, which is constituted by persons of different faiths and convictions. Therefore, an individual needs to explain his or her position through arguments based on respect for human life and

\footnote{58} Id.
\footnote{59} Id. at 16.
\footnote{60} See Carlo Focarelli, Il sistema degli stati e il governo dell’umanità nel diritto internazionale contemporaneo, 6 QUADERNI DI RELAZIONI INTERNAZIONALI 42, 51 (2007). Tariq Modood rightly underlines that common interest may be more important than agreement “for dialogue to be sustained.” Modood, supra note 7, at 118.
\footnote{61} See Cover, supra note 56, at 9.
the harm inflicted by abortion and euthanasia on the whole society. While one’s personal choice may be inspired by religious convictions, these convictions must remain in the background. Because everyone has the right to take part in a debate where decisions are made that bind everyone, it is fair for the debate to be based on arguments that all can understand through a sound use of reason. This does not mean that religion is excluded from the public forum. It only means that in order to enter that forum, religion needs to be expressed in a language and through arguments that everyone can understand. Once the public debate has ended, the majority rule must be respected. In other words, once a law permitting abortion or euthanasia has been democratically approved, all are bound to respect it, including those who are convinced that abortion and euthanasia are evils. Naturally, that does not prevent those opposed to the law from trying to change it through all means acceptable in a democratic regime and, as a last resort, from making use of conscientious objection.

This is the general principle of democracy. But, history shows that democracies too can go mad and suggests that governments should apply some limitations to the majority rule. The most important limitation is based on the idea that there are rights (and probably obligations) that cannot be put to a vote but must be granted to every human being simply because he is a human being. As a consequence, the majority rule does not apply to fundamental rights, such as the right to life, but it applies to the concrete implementation of these fundamental rights, such as deciding whether the death penalty is a violation of the right to life. Although their philosophical foundation remains uncertain, human rights are the best instrument we have to avoid the degeneration of democracy and dictatorship of the majority that are potentially able to negate the very existence of human rights.

These concepts—the principle of reasonableness, the majority rule, and human rights—define a very large playing field but are not useless. They compel all the normative communities to frame their specific claims in more general terms and grant that the competition among different legal meanings (again in Cover’s sense\(^{62}\)) is conducted on equal terms. By accepting these ideas, religions agree to transform their message from a universal declaration of a

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particular truth into a particular declaration of a universal truth. But, in doing so religions are not asked to renounce their truth claim. Affirming the truth is not incompatible with respecting the freedom of those who follow a different truth. Therefore, the members of a religious or belief community can fully participate in the free and open debate of civil society without giving up or marginalizing the claim that their religion or belief is the “true one.”

In conclusion, Bökenförde was right when he said that constitutional texts cannot create values, thus it is unfair to expect that they can give citizens a feeling of belonging and solidarity. This is the weak point of the notion of “constitutional patriotism.” But, through its constitution, a state can offer the necessary legal framework where Cover’s jurisgenetic communities develop in a state of relative peace without abjuring their truth claims. If states are able to perform this task in an equitable way, then civil religion can find a strong foundation on the shared interest of all social actors and the reconciliation of law and love could be possible once more.

64. On this point, see the German lawyer Ernst Wolfgang Bökenförde, Wahrheit und Freiheit: Zur Weltverantwortung der Kirche heute, zur Debatte, July 2004, at 5–6.
65. See id.
66. See generally Jürgen Habermas, Between Facts and Norms: Contribution to a Discourse Theory of Law and Democracy (1996). “The concept of constitutional patriotism designates the idea that political attachment ought to center on the norms, the values, and, more indirectly, the procedures of a liberal democratic constitution.” Jan-Werner Müller & Kim Lane Scheppele, Constitutional Patriotism: An Introduction, 6 Int’l J. Const. L. 67, 67 (2008).
67. See Cover, supra note 56, at 9.