LAÏCITÉ AS CIVIL RELIGION: AN ITALIAN AMERICAN PERSPECTIVE

PASQUALE ANNICCHINO*

It is a privilege for me to contribute to this Symposium with such distinguished scholars as Professor Frederick Gedicks and Professor Cole Durham, and to comment on the paper presented by Professor Blandine Chelini-Pont. Especially in this year, it is a particular honor for me to sit on the same panel with Professor Cole Durham, the recipient of the 2009 First Freedom Award. As Isabelle Kinnard, Vice President for Education at the First Freedom Center, said during the conferring ceremony: “Professor Durham truly stands out amongst a group of esteemed internationalists as an exemplar for the international protection of religious freedom. He has helped countries from around the world make religious freedom constitutionally protected.”¹

This Article follows the structure of the paper written by Professor Chelini-Pont,² commenting on it in light of some recent developments in both the United States and Italy, and adding a few remarks at the end. It mainly focuses on the principle of laïcité.

I. THE CIVIL RELIGION DEBATE

The importance of the debate on “civil religion” is illustrated by the striking breadth of recent discussions³ and case law ranging

---

* Junior Fellow, Law and Religion Programme, Università degli Studi di Siena. LL.M. 2009, European Public Law University College London; Visiting Scholar 2007, Center for the Study of Law and Religion, Emory Law School; M.A. 2006, Public Law University of Siena; LL.M./D.E.A. 2004, European Academy of Legal Theory; J.D. 2004, University of Siena. This article was originally presented at Brigham Young University Law School in Provo, Utah on March 12–14, 2009. I am grateful to Frederick Mark Gedicks and Cole Durham for the invitation to the “Civil Religion in United States and Europe” conference. I would like to thank Félicien Bardsley, Colm O’Cinneide, Michael Freitas Mohallem, Natalie Rosen, Alberto Saavedra, Gianluca De Fazio, Ajsla Siskovic, Chiara Armeni, Francesco Fasanella, Chris Appleby, Justin Leslie and Giulia Pelosi. All the errors, as always, are mine.

³. See Frederick Mark Gedicks & Roger Hendrix, Uncivil Religion: Judeo-Christianity and the Ten Commandments, 110 W. VA. L. REV. 275, 279 (2007); Robert N. Bellah, Alonzo L.
from the debate on the European Constitutional Treaty to the recent cases decided in the United States.4

In Europe, for instance, the Lisbon Treaty5 did not include an article on European symbols, such as the flag, Europe day, the currency, the motto, and the common anthem of the European Union.6 Far from being only a symbolic issue, this decision is an important signal of weakness and a lack of faith in the project of European integration. Law can have a symbolic function; the regulation of symbols is of particular importance to signal a shared commitment to certain ideas.7 In this case, as Larry Siedentop pointed out after the failure of the referendum for ratification in Ireland, Europe had again failed “to restore idealism.”8 Silvio Ferrari was therefore correct when, in his introductory paper to this Symposium, he expressed his doubts on the possibility of a civil religion for Europe.9

In Italy, the debate on civil religion was fostered by several interventions by the most important newspapers10 and a recent survey

---


6. Only a declaration was attached to the treaty. According to Declaration 52, these “symbols . . . express the sense of community of the people in the European Union and their allegiance to it.” Id. at 267.


10. See Vito Mancuso, Perche Abbiamo Bisogno Della Religione Civile, LA REPubblica, May 5, 2009, at 46; Vito Mancuso, La Religione Civile Che Manca All’ Italia, LA REPubblica, Jan. 13, 2009, at 1. Marco Ventura has argued that “[a]s far as the Italian situation is concerned, reference to the concept of civil religion is made by those who complain of a lack of public identification of the country. In Italy, however, unlike what has happened in other countries in the past, a civil religion has never developed.” Marco Ventura, The Permissible Scope of Legal Limitations on the Freedom of Religion or Belief in Italy, 19 EMORY INT’L L.
conducted by Ilvo Diamanti¹¹ found that an individual’s degree of identification with his state is much lower than his degree of identification with his family. These findings are consistent with those of the American sociologist Edward Banfield, who coined the term “amoral familism” to describe a kind of social action oriented more towards the economic interest of the nuclear family than the public good.¹²

Regarding what may concern the interaction between the “religious factor” and the civil religion dimension, Silvio Ferrari has argued that nowadays “[t]he 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.”¹³ To a certain extent, Catholicism has played the role of a quasi-civil religion for Italy, but the increasing complexity and plurality of Italian society highlights the basic problem, which Andrew Koppelman has pointed out in his contribution comparing the Italian and American versions of civil religion.¹⁴ According to Koppelman, Italy faces a fundamental problem: “its civil religion is more specific and less Unitarian than ‘the United States’ has been [and] . . . some way to move toward greater abstraction must be invented.”¹⁵ In other words, Italy must seriously consider a new constitutional patriotism. Using Catholicism as a substitute will not work.

In the United States, the U.S. Supreme Court recently decided Pleasant Grove City v. Summum,¹⁶ a case that involved the Free Speech Clause and the Ten Commandments, and that is already being tested by the U.S. Court of Appeals for the Tenth Circuit in American Atheists, Inc. v. Duncan.¹⁷ Additionally, in the U.S. Court

¹³ Ferrari, supra note 9, at 753.
¹⁵ Id. at 872.
¹⁷ American Atheists, Inc. v. Duncan, 616 F.3d 1145 (10th Cir. 2010).
of Appeals for the Fourth Circuit case entitled Newdow v. Roberts, a party sought to enjoin the Chief Justice from adding “so help me God” to the constitutionally prescribed presidential oath and to declare unconstitutional the use of clergy to deliver an invocation and benediction.

Justice O’Connor, former Associate Justice of the U.S. Supreme Court, sitting by designation for the Fourth Circuit in Turner v. City Council of Fredericksburg, upheld the policy of legislative non-sectarian prayer. Quoting from Marsh v. Chambers, Justice O’Connor wrote as follows:

[There can be no doubt that the practice of opening legislative sessions with prayer has become part of the fabric of our society. To invoke Divine guidance on a public body entrusted with making the laws is not, in these circumstances, an “establishment” of religion or a step toward establishment.]

According to Justice O’Connor, the prayers had a common characteristic: “they recognized the rich religious heritage of our country in a fashion that was designed to include members of the community, rather than to proselytize.” Dean Eugene Rostow of Yale Law School had already argued in 1962 that the government’s “conventional and uncontroversial” expressions of faith, which he defined as “ceremonial deism,” do not violate the Establishment Clause of the U.S. Constitution. The expression “ceremonial deism” was later used by U.S. Supreme Court Associate Justice Brennan in Lynch v. Donnelly.

Justice O’Connor touched upon the fundamental function that a “civil religion” is supposed to have for a society: to foster the inclusion of the members of the community and to avoid the creation of a “state within a state.”

It is therefore important to analyze civil religion from a theoretical point of view. Different issues are at stake when we talk about

---

19. Id.
21. Id. (quoting Marsh v. Chambers, 463 U.S. 783, 792 (1983)).
22. Turner, 534 F.3d at 356.
25. See Jürgen Habermas, Equal Treatment of Cultures and the Limits of Postmodern Liberalism, 13 J. POL. PHIL. 1, 23 (2005).
civil religion. Bearing in mind that the same notion of civil religion is not clear-cut, we may deal with it from different perspectives.

At least two lines of analysis are possible. At the level of a normative theory of civil religion, we may ask ourselves the following questions: Do we need a civil religion? Is it useful? At the level of positive theory of civil religion, we can ask ourselves: what are the forces and the institutions that condition civil religion?

According to Chelini-Pont, the notion of civil religion represents “a combination of collective rituals that reveal a devotion to the unity of a nation and a national mythology made up of a diffusion of beliefs and representations that constitute the dominant mental attitudes of a society.”

Does this notion of civil religion fit with the concept of laïcité? According to Chelini-Pont, for the French, the principle of laïcité represents a very simple idea: “education through secular learning, and . . . the complete privatization of religious practice.” But, this principle does not stand alone within the basic framework of the French civil religion. Chelini-Pont identifies three main building blocks within the French civil religion: the principles of laïcité, la République or the Republic, and France itself. These three principles lead to a civil religion that is “complex [and] rich in roots of all kinds, and contradictory.”

II. LAÏCITÉ

According to Alexis de Tocqueville, in France, religion and liberty opposed each other, while on the other side of the ocean Americans were successful in combining the spirit of religion and the spirit of liberty. This ability to combine the spirit of liberty and the spirit of religion distinguishes the American tradition of religious freedom, protected by the First Amendment, from the French principle of laïcité.

This is nothing new for Chelini-Pont. Writing with Jeremy Gunn, she had already underlined the differences between the two founding mythologies, but for Chelini-Pont, the principle of laïcité stands, first among the others, as the cornerstone of French identity. This analysis conforms to the famous speech made by for-

26. Chelini-Pont, supra note 2, at 765.
27. Id. at 766.
28. Id. at 767.
29. ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 274 (Harvey C. Mansfield & Delba Winthrop trans., Univ. of Chicago Press 2000).
mer French President Jacques Chirac in 2003 when he stated: “It is in fidelity to the principle of laïcité, the cornerstone of the Republic, the bundle of our common values of respect, tolerance, and dialogue, to which I call all of the French to rally.”

Contrary to President Chirac however, Chelini-Pont points out that the coincidence of the principle with the French civil religion is “merely a temporary coincidence.”

Seen from Italy, the French principle of laïcité may appear problematic. According to Silvio Ferrari, “[t]he 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 [religions].”

If this is true at a general level, when we analyze in detail the action of French politicians and the changes that are affecting French society at large, we realize that religion is becoming an important factor. According to Ferrari, “President Nicolas Sarkozy’s reference to ‘positive laïcité’ shows that the exclusion of religion from the public sphere is no longer a dogma officially supported by the French government.”

Marco Ventura has therefore argued that the principle of laïcité seems to be a rhetorical exercise, rather than a concrete foundational element of a civil religion.

Looking at the speech that President Sarkozy gave in the Basilica of Saint John Lateran when he was inducted as honorary canon, it is important not only to read his speech (as we would have done applying the methodology used by Robert Bellah in his seminal article), but to actually have a look at the video of his speech. When Sarkozy says “France has essentially Christian roots,” he pauses and then the cardinals applaud. Then, Sarkozy defends the principle of laïcité, which is followed by no applause. The contradictions of his speech were not noted by the bishops present

32. Chelini-Pont, supra note 2, at 766.
33. Ferrari, supra note 9, at 753.
34. Id. at 758.
35. Marco Ventura, Quella Laicità Francese è Solo Vuota Retorica, Corriere della Sera, Sept. 6, 2008, at 45.
38. See id.
39. See id.
Laïcité as Civil Religion

823

at this meeting. The very same concept of “laïcité positive” proposed by Sarkozy seems to contrast with the traditional understanding of the concept of laïcité as we have known it so far.

Is the French laïcité the cornerstone of the Republic, even if only on a “temporary basis,” or an exercise in “empty rhetoric?” Truth is to be found neither in the thesis nor in the antithesis, but in a new synthesis that reconciles the two. It may be interesting to note for our U.S. colleagues that, in those days, almost no attention was devoted in the United States to the speech given by President Sarkozy. Sarkozy also gave a speech in Saudia Arabia, the only country that objected to the concept of religious freedom in the drafting of the Universal Declaration of Human rights, and a country that is in permanent violation of the rights of religious minorities. In Saudia Arabia, he said that “Dieu est au coeur de chaque homme” or “God is the heart of each man” and mentioned the name of God thirteen times in his speech. In this context, the speech can easily be interpreted as a backing of an oppressive regime that uses religion to impose an intolerant ideology. The French newspaper Le Monde, commenting soon afterwards, described it as “une opinion philosophique étonnante de la part du chef d’un Etat laïque” or “a stunning philosophical opinion on the part of a head-of-state of a secular country.”

Chelini-Pont rightly points out that the French civil religion, as every religion, has its own sacred text. In this case, the sacred text is the Declaration on the Rights of Man (the “Declaration”). The importance of a sacred text in a “civil religion” has been pointed out by scholars such as Sanford Levinson in his well-known work Constitutional Faith. The Declaration, like the text of the U.S. Constitution, is, as Thomas Jefferson pointed out, “too sacred

40. See id.
41. President Sarkozy discussed this idea in detail in his book, which was published in 2004. See generally NICOLAS SARKOZY, LA REPUBLIQUE, LES RELIGIONS, L’ESPÉRANCE (2005).
43. See MARY ANN GLENDON, A WORLD MADE NEW 168 (2001).
46. Chelini-Pont, supra note 2, at 770.
47. DECLARATION DES DROITS DE L’HOMME (1789).
to be touched.” The most important principles endorsed by the Declaration are to be taught in the public schools where new citizens are raised. The pedagogical function of the sacred document is well explained by what John Quincy Adams said regarding the fiftieth anniversary of the U.S. Constitution:

Teach the Constitution’s principles, teach them to your children, speak of them when sitting in your home, speak of them when walking by the way, when lying down and when rising up, write them upon the doorplate of your home and upon your gates.

This pedagogical function is assured in France by the public system of education, but nowadays the principle of laïcité faces new challenges in France. The new waves of immigration, the rise of “political-Islam,” and the fragmentation and individualization of society call for new strategies that are capable of integrating the newcomers. These are the new challenges that the first cornerstone of the French civil religion, the principle of laïcité, is called to face.

For Chelini-Pont, besides the principle of laïcité, there are two other formats of the French civil religion: the concepts of the Republic and France itself.

III. THE REPUBLIC AND FRANCE ITSELF

The process of nationalization has become one of the most concrete examples of a symbolic war. For instance, the French Conseil d’État refused to grant French citizenship to a Moroccan because wearing a burqua is supposed to be incompatible with the essential values of the French community. It is very telling to note that the United States faced a comparable case in 1943, but reached the opposite conclusion. The problem that Communism posed to the United States after World War II was the same type of “integration dilemma” that Muslim citizens pose to most European states


50. LEVINSON, supra note 48, at 12.

51. “Political Islam” refers to a conception of Islam that emphasizes the political dimension of the Islamic religion and the role that Muslims claim in the public sphere. See David A. Westbrook, Bin Laden’s War, 54 BUFF. L. REV. 981, 992 (2006).

52. See Chelini-Pont, supra note 2, at 771.


nowadays. In *Schneiderman v. United States*, the naturalization process was authorized for a member of the Communist Party. The U.S. Supreme Court was divided and Justice Frankfurter wrote a note for Justice Murphy before the circulation of the draft opinion arguing, “The American Constitution ain’t got no principles. The Communist Party doesn’t stand for nothing. The Supreme Court does not mean nothing, Nothing means nothing, and the hell with the U.S.A. so long as a guy is attached to the principles of the U.S.S.R.”

Are people who endorse values that are perceived as inconsistent with those expressed by the majority of a given society able to be integrated? Are they able to become full citizens and to respect social norms and values that may contradict or challenge their religious faith, beliefs, or personal convictions? These issues were already identified by Jürgen Habermas as the dilemma of postmodern liberalism.

For what may concern France, Jean Bauberot has correctly linked the French case with the tradition of the “Republican civil religion,” which both Bellah and Chelini-Pont argue is another element of the French civil religion. The Republic and the very same concept of France itself constitute the other two formats of the French civil religion according to Chelini-Pont. She analyzes in detail the two concepts and devotes particular attention to the symbols of the Republic.

IV. Conclusion

Chelini-Pont suggests that the principle of laïcité is the product of the interaction of different components, but centered on the prominence of the institutions of the state leading to their veneration, of a sort. This is the image that emerges from her representation. Further discussion is necessary, especially on this characterization and on the same notion of “civil religion.” As Bellah wrote, civil religion is best described “not as the workmanship

55. See id.
56. Levinson, supra note 48, at 144.
57. See generally Habermas, supra note 25 (discussing issues in achieving postmodern liberalism).
59. See Chelini-Pont, supra note 2, at 787; Bellah, supra note 36, at 13.
60. See Chelini-Pont, supra note 2, at 787.
61. See id. at 790–94.
of the . . . [f]alse nation, but as an understanding of the (American) experience in the light of ultimate and universal reality.”

This should not lead the United States or any other nation to abandon a sense of humility. According to Reinhold Niebuhr, there is always a degree of sin and self-interest in the actions that we undertake:

While we in America affect to pity Europe, the sense of moral superiority, which is always the root of pity, is based on illusion. We are no more moral than Europe, but our tremendous wealth and our comparative geographic isolation save us from suffering any immediate consequences of our moral follies.

Whatever Italy, France, or the United States decide to do with their different experiments in civil religion, this warning must be kept in mind.


63. Reinhold Niebuhr, Our Secularized Civilization, CHRISTIAN CENTURY, Apr. 22, 1926.