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RELIGIOWEST KICK-OFF MEETING WORKING DOCUMENT

OLIVIER ROY

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Religion in the West: The (re)construction and formatting through courts, social practices, public discourse and transnational institutions

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AIM OF THE WORKING DOCUMENT

This working document is based on the submission made by Prof. Olivier Roy to the Europe Research Council for the ERC Grant Call (7TH Framework Programme). It aims at focusing on the key questions that the research project will tackle in the future with the purpose of collecting important feedback from the scholars invited to the kick-off meeting in order to rethink about and reframe the research agenda.

INTRODUCTION

The different Western states (Europe and North America) are redefining their relationship to religions, under the challenge of an increasing religious activism in the public sphere, associated with new religious movements (evangelicalism) and with Islam. Although each country starts from very different and specific contexts of the relationship between state, religion and public sphere, this move seems to lead to a more uniform perception of what the relationship should be. More importantly, it seems to lead to the use of a **common paradigm of what a religion is**, with the consequence of pushing religions, through a complex array of constraints (public order) and incentives (freedom of religion), to format themselves according to this common paradigm. But, due to the de jure or de facto separation of church and state, governments have little leverage on this process. **It is made under a mix of social and political pressure (banning or not the visible signs of Islam for instance) and the promotion of a**

concept of freedom of religion more linked to the individualistic American tradition than to the European tradition of dominant or even established religions with close relations (even conflicting) with the state.

The public debate in the West is about integrating Islam and curbing religious extremism, mainly attributed to the so-called “new religious movements” (NRM), as if there were a pre-existing stable system (the Western model of a nation-state), suddenly undermined by recent external inputs (migrants, missionaries and converts to new religious movements). But in fact we are witnessing **a dialogical process**: while in Western Europe the nation-state model is changing under internal and external constraints (as a consequence of European integration and globalisation), the external inputs are also being shaped, more or less willingly, into a religious paradigm that could be seen as acceptable. One of the paradoxes is that what is seen as an external challenge (Islam and new religious movements), contributes to push the Europeans to find a common way to deal with this challenge, and thus contributes to European integration.

The new paradigm to understand the role of religion in society is quite different from the national models. These national models are being challenged by European integration, by what we could call the globalization of American legal paradigms, and by new forms of religiosity common to all the thriving religious movements (namely individualization and visibility). The problem is that the **construction of this new paradigm of religion lacks a cultural rooting and is often perceived by the European public opinions as alien to a (mostly re-invented) national tradition.**

THE OLD MODELS

Since the rise of the Westphalian State, Western European states have been dealing with religion by starting from the principle “*Cujus region, ejus religio*”, which entails a strong link between a state, a society, a territory and a religion. For different reasons (outcomes of religious wars, role of international treaties in protecting religious minorities, enlightenment, the influence of the Catholic Church or of the Reformation), they have elaborated, over the last three centuries, different models based on their own history of relations between the State, religion and the public sphere. Europe is confronted with a whole spectrum of very different paradigms, thus making it difficult to speak of a “*European paradigm of relations between State and Religion*”. Take for example:

- a **smooth secularization** which has slowly deprived the established churches of their power (Scandinavian states, Great Britain)
- a **pillarization system**: the recognition of a precise number of “national faith communities” (Germany, Belgium, Holland, and to a lesser extent Switzerland through local devolution of power to the cantons)
- a **strong separation** of Church and State for different and even opposed reasons (in France to protect the state from the influence of the Catholic Church, in the USA to protect the churches from the State).
- a **concordatary system** between states and churches, which has evolved from a monopoly given to the Church, to a more open system, even if the Church is favoured (Spain, Italy, Portugal, Greece, although the later is not under Concordat).

Hence at the end of the XXth century, all Western countries seemed to have settled the “religious issue” and reached a domestic consensus. **This consensus has been largely internalized by public opinion and policy makers and became the underlying narrative for a more and more elusive national identity, which is now put into question by migrations, European integration and globalisation.**

In the second half of the XXth century, the link between an established religion, or at least a traditional dominant religion, has been increasingly unsettled by important changes.

First of all, secularization has made religion far less relevant in terms of identity, specifically in Northern Europe and France, where a deep wave of cultural and social secularisation has deprived the dominant churches of their power. In France, the struggle between “*école laïque*” and “*école privée*”, which had polarized the society for a century, became less and less relevant due to the de-confessionalisation of the private schools and the changing patterns of schooling among the left middle class. In the USA, the Supreme Court has, especially from the sixties to the eighties, emphasized separation of Church and State in reference to the 1st amendment, while in Canada, the brutal secularization of Quebec made the weight of religion less relevant.

But in countries where national identity is still seen as linked with a given religion, this link has been put into question. Democratization in Greece, Spain and Portugal as well as the commitment of the EU (Lisbon Treaty) to sign the Convention on Human Rights have allowed different religions to be recognized. In Greece, the removal of religious belonging from ID cards has been imposed by Brussels despite a huge opposition from the Orthodox Church

Everywhere immigration has brought new religions. Islam has been rooted in Europe through a huge wave of labour immigration. The second generation has often experienced a religious revival that pushes its members to try to redefine a cultural heritage into a militant quest for recognition of reconstructed norms in the public sphere. Although largely underestimated, conversions also play a big role in delinking religious and cultural identities. Hundreds of thousands of Spanish-speaking migrants from Latin America converted to evangelicalism in Spain between 1992 and 2008. Converts and born-again are more prone to push for the recognition of their religious identities in the public sphere. New religious movements have also spread (Jehova Witnesses, Church of Scientology). The Catholic Church has also been influenced by the charismatic forms of religiosity and the spread of non-territorial fraternities, mainly recruiting among lay believers. **The Church is also experiencing a “minorisation” effect:** it sees itself more and more as a besieged minority under pressure from the surrounding culture and public opinion (scandals about paedophilia), contributing to blur the religious landscape of Europe.

The more conspicuous religious activism led, in Western Europe, to a backlash either in favour of secularism or traditional established religions (see the debate on the crucifix, veil, minarets). Governments have been unable to deal with these issues because of the principle of the separation of church and state. Moreover, the Westphalian nation-state model of dealing with religion is in crisis. **It proves more and more difficult to “nationalize” and re-territorialize globalized religions.** The link between established religions and national cultures is destroyed by the deculturation brought by revivalist and fundamentalist religious movements (evangelicalism, salafism). Conversions and “à la carte” individual religious affiliations have also undermined the stability of traditional churches and religious communities.

Furthermore, **the U.S. promoted concept of “religious freedom”, linked with individual choices and not on communal belongings, is challenging any state endeavour to control religion.** Such a personal freedom is not negotiable at the political level: its limits are usually defined by courts and not by the state. Such a paradigm is delinked from the national historical settings which have defined for every country its idiomatic set of relations between state, religion and public sphere. **It is based more on the role of courts than on state law.**

States no longer define their relationship to religion but are requested to comply with new international standards of religious freedom.

This shift, from a political approach to a legal one, is far from being limited to religion of course, but it has tremendous consequences when concerning religion. It challenges the specific national models that frame the imaginary of citizens. The consequence is that the formatting and control of the new religious communities are enacted either by political movements or by the courts.

Secularization and religious practices have been extensively studied. Changes brought in the religious fields by “new religious movements” and new forms of religiosity (evangelicalism) have been widely studied. Some sociologists have studied how Muslims adapt their practices to a Western context. There is also an array of research on how courts deal with new religious challenges. The impact of the adoption of new legal paradigms has also been studied.

But to our knowledge, no academic research has yet tried to bring together these four issues: **how secularization, how rooting of Islam in the West, how global changes in the religious market and how the spread of a new paradigm of freedom of religion, all as global phenomena, affect the public sphere and cause non-coordinated endeavours from States,**

courts and institutions to establish new rules of the game, thus providing changes in the paradigm of religion. The existing academic literature either concentrates on the issue of Islam, or confines itself to the realm of law, or tends to consider the relations between states and religions in a broader historical perspective.

Proposals to adopt or extend new paradigms (multi-culturalism as well as the opposite French concept of “laïcité”) tend to ignore the in-depth changes that make these two paradigms largely irrelevant.

REDEFINING RELATIONS BETWEEN STATES AND RELIGIONS: THE NEW MODELS

The equilibrium achieved more or less easily in the different countries has been recently challenged by a string of new trends:

- **new forms of religiosity** among existing religions are challenging the present forms of secularization and the consensus on the role of religion in the public sphere; Pentecostal and evangelical movements among protestants, traditionalist and charismatic trends within the catholic church, *haredim* communities among Jews are often putting into question the compromise specific to each country.
- **the coming of Islam** in the wake of a more or less massive immigration movement: Muslim religious practices are now visible in the public sphere, stirring some negative reaction.

- **increasing conversions** blur the connexion between cultures and religions; converts often ask for more visibility for purely religious practices disconnected from their own traditional culture. Hence the concept of multiculturalism, which supposes a permanent link between religion and culture and which is still the main intellectual and political principle in western democracy, is unable to deal with new religious demands.

THE ROLE OF TRANSNATIONAL ACTORS (UN, Supra-national Courts, NGOs, etc.)

The development of “freedom of religion” as a standard and transnational binding requirement has been enhanced by UN institutions, international courts and some states (USA). **This development has largely been pushed by the US government: the standard of religious freedom is mainly an American standard, a fact that has stirred strong opposition in certain countries like Russia.** The issue here is that the enhancement of “religious freedom” ignores, bypasses or contradicts many national legal tenets and practices. It contributes to destabilize the existing compromises and gives a new visibility to religion in the public sphere. For instance: the pressure of the U.S. Commission on International Religious Freedom and the State Department on European countries to recognize the Church of Scientology as a religious denomination; the 2009 European Court of Human Rights’ decision against the compulsory display of the crucifix in Italian class rooms; and the request by the EU commission that Greece drops the mention of religion on ID cards, all alter the traditional balance and consensus on what is the place of religion in the public sphere.

Transnational religious actors: the Catholic Church and the Muslim League, push for changes in legislation (abortion) and for legal censorship on attacks against religions. Blas-

phemy and apostasy are issues that necessitate defining more precisely the boundary between State and religions. Some of these actors act in opposition to the States (the Muslim Brotherhood for instance) or independently (Gülen, Habbash, Ahmediyya). Conversely some states do develop their own international religious networks (Morocco or Turkey through the Directorate of religious Affairs).

Domestic courts tend (and are often bound) to apply these new international standards and contribute to redefine what a religion is supposed to be (for instance the granting of the status of tax exemption to Jehova's witnesses in France, or the refusal of the British court of appeal to recognize a Jewish believer by considering his mother's religion).

THE REACTION FROM PUBLIC OPINION

Confronted with these changes, and notwithstanding the pressure from an extreme right turned from anti-immigrants to anti-Islam (see the case of Geert Wilders in the Netherlands and the Tea Party in the USA), a large part of national public opinions call for governments to redefine by law the visibility of religions in the public sphere, either in favour of an enhanced separation (on the model of "laïcité" in France) or in favour of the dominant traditional religion(s) (Switzerland, Italy). But this short term reaction has also to be understood in a longer term trend: secularization, either as a cultural process or as a state policy, has worked in Europe, and ostensible religious practices are often seen as more or less "weird" or as expression of fanaticism, hence limiting religious freedom. The secular ignorance of religion entails also a need to redefine the space of religion in order to uphold basic principles of freedom.

RESEARCH QUESTIONS

In a word, globalization through its different forms (transnational actors, migrations, conversions, deculturation, international media, Internet) has pushed Western States to redefine not only their relations with religions, but also, unwittingly, the **very definition of what a religion is**. Localism has been made global by the media (Al Jazeera): for instance a local issue (apostasy in Malaysia, Danish cartoons, same-sex marriage in California) may become almost instantaneously a global issue. **The concept of multiculturalism has been largely irrelevant in the West to deal with the issue of new religious practices**, and, in consequence, there is a need to approach the issue of public opinion and perceptions by concentrating on the religious sphere. Islam shapes the debate, but the debate is not reduced to Islam at all.

Despite the incentives and the pressures from public opinion to legislate, most states are restricted from passing laws on religion either by their constitution (separation of church and state), or more often by politicians' reluctance to enter into a debate on religion that will bring no gain for them, unless they make it a policy in itself (as does Geert Wilders). **By consequence, the "formatting" and the reshaping of the relations between public sphere and religions are made by other actors:**

- the courts, in dealing with civil, administrative and labour issues.
- the local administrations, (on diet, clothing, prayers time etc), often sanctioned by court decision.
- the business sector, by dealing with new markets (hallal or kosher food), finance (Islamic banking) or new requests from the labour force and employees.

- society itself: the recasting by believers of religious tenets and practices, in a context where religion is no longer embedded in a traditional culture, is done along a whole array of positions (from liberal to fundamentalist, going through conservative: for instance the veil) and might lead to new forms of co-existence or on the contrary “ghettoisation”.

Despite tensions, all these different and often conflicting processes have a homogenising dimension: **European domestic courts tend to create a doctrine usually based on decisions from supranational courts (Strasbourg).**

The consequence is that the process of unifying and redefining what religion is, or should be, **is done without engaging in a clear political option: this creates uneasiness and anxiety among public opinion, it questions the issue of legitimacy** (while former arrangements were the product of political games settled over the years, court decisions are often seen as top-down impositions), and contributes to delegitimize the political level, because it seems to follow, or passively uphold, trends and decisions already at work.

Taking into consideration this background, *ReligioWest* aims at focusing on the following research questions:

- I. Rethinking the concept of religious freedom: does freedom of religion recognize religions or construct religions?**
- II. The intellectual independence of justice: how are courts influenced by the non-legal paradigms of the debate? (for instance recognizing a “dominant” culture, “Leitkultur”). How do the courts address the “public debate” and actual polem-**

ics? The evolution of the courts: how decisions have or have not changed during the last twenty years.

III. Freedom of religion: individual or collective rights? From addressing churches to dealing with citizens? The impact of the concept of minority rights and multiculturalism on dealing with religions.