



The Construction of Religion by Western Courts and Laws

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Tuesday 11:00-13:00

Seminar Room 3, Badia Fiesolana

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The relations between State, religion and public sphere in the European countries have been fixed on the basis of the settlement of the wars of religions, resulting either in the hegemony of a dominant faith, or in a compromise between a restricted numbers of religious groups. Freedom of religion has been a highly political issue, because it was related to the definition of the nation and the legitimacy of the state. Secularization and democratization led both to a new kind of conflict between the state and the Catholic Church (France) and to more tolerance and freedom. In any case the role of religion was framed in a national framework, with great variations from one European country to the other. But during the second half of the XX century, national compromises have been challenged by the rooting of other religions (Islam, New Religious Movements), the process of homogenisation of the legal definition of religious freedom as an individual human right, the role on international courts and treaties. The seminar will study this process and question the issue of the formatting of religious practices and the quest for a common paradigm of religion that challenge the national historical compromises.

- 1) State and Religion in Europe from the wars of religion to the so-called Westphalian State model.
- 2) The variety of the European models of State-religion relations.
- 3) The recasting of the religious landscape in Europe: secularization, immigration and new religious movements.
- 4) The debate on Islam in Europe (veil, burqa, minarets).
- 5) The role of the courts: between religious freedom as individual rights and the affirmation of a “dominant culture”.
- 6) The Catholic Church and the meaning of the “Christian identity” of Europe.
- 7) The populist movements and the instrumentalisation of religion as identity.
- 8) The role of the European Parliament and the European Court of Human Rights.
- 9) Congruence of religiosities or multi-culturalism: the actual trends of religious practises in Europe.
- 10) Conclusions and debate.

General Readings:

Olivier Roy "Holy Ignorance", Hurst, London, 2010 (third part).

N. Doe, Law and Religion in Europe. A comparative introduction, Oxford, Oxford University Press, 2011

As a general reference, with several articles, see the issue of the GWILR http://www.gwilr.org/?page_id=18 (the articles can be freely downloaded)

More specific:

Those with an interest in the regulation country by country can download the articles from the 2005 issue of the Emory International Law Review (there is also a very important article on the European Court of Human Rights) <http://www.law.emory.edu/student-life/law-journals/emory-international-law-review/content/archive/volume-19.html>

On the European Christian identity there is a seminal 2003 book by J. Weiler, *Un'Europa Cristiana. Un saggio esplorativo*, Milano, BUR). The book is available only in Italian but see the comment S. Cvijic and L. Zucca, Does the European Constitution needs Christian values?, *Oxford Journal of Legal Studies*, 24 (4), 2004, pp. 739-748.

On the role if courts see the conference papers from the ReligioWest kick-off meeting (especially Ventura's and Hirsch's).

Ran Hirschl: "Comparative Constitutional Law and Religion" *Comparative Constitutional Law* (Tom Ginsburg and Rosalind Dixon eds.; Edward Elgar, 2011), pp. 422-440

Ran Hirschl: "Holy Glocalization: Constitutional Law and Sacred Texts in the Non-Secular World" *Harvard International Review* 32 (Summer 2010): 38-43.

Shachar, Ayelet and Hirschl, Ran "The New Wall of Separation: Permitting Diversity, Restricting Competition", *Cardozo Law Review* 30 (2009): 2535-2560

Marco Ventura: "Religious pluralism and human rights in Europe. Equality in the regulation of religion", in *Religious pluralism and human rights in Europe*. Loenen, M.L.P. Goldschmidt, J.E. (eds.), Intersentia, 2007 Antwerpen.

M. Ventura, "The Changing Civil Religion of Secular Europe", *George Washington International Law Review*, 41, 4, 2010, 947

On religious trends we have a very comprehensive report by the Templeton Foundation (http://news.uchicago.edu/static/newsengine/pdf/religionsurvey_20091023.pdf)- See also comment on the NYT: <http://www.nytimes.com/2009/10/24/us/24beliefs.html>