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Religion and State - From separation to cooperation? Legal-philosophical reflections for a de-secularized world

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Religion and State – From separation to cooperation?

Legal-philosophical reflections for a
de-secularized world (IVR Cracow Special Workshop)



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FOREWORD

Religion is increasingly a social and political factor in post-modern societies nowadays and the question of the role of religion in the public sphere is more and more brought to the fore. Several questions arise which are of interest and pose a challenge to legal philosophers. Should religion be only a private affair, or should the public dimension of religion be more acknowledged? Do we have to interpret the freedom of religion and the separation of church and state in a strict (laïcist) sense, or do we have to allow for a more benevolent relation between religion and the state. In a world that is rapidly “de-secularizing” (according to a term of Peter Berger, *The Desecularization of the World. Resurgent Religion and World Politics*, Grand Rapids: Eerdmans 1999), the question of the proper and just place of religion in society, politics and law is more urgent than ever since the devastating wars of religion in Europe in the 16th and 17th Century. Initially, a Special Workshop at the 23rd IVR-Congress was organized by Bart Labuschagne (Leiden University), with the purpose of reflecting about the current and desirable relationship between religion and the state. What concepts are relevant for our present understanding of this problem? Is it possible to rationally and philosophically discuss the merits and demerits of a strict separation of church and state, and that of cooperation between religions and the state? During the Special Workshop, to which the initial organizer unfortunately could not attend to,¹ these questions were explored and debated in several papers, the result of which is collected in the pages below. These contributions will be introduced now.

In his article titled *From Animosity to Recognition to Identification: Models of the Relationship of Church and State and the Freedom of Religion*, Winfried Brugger proposes six models of the relationship between state and church, as standards that guide the solution, mainly constitutional, of ‘hard cases’ that cross the limits of the spheres of state and religion. The models, actually present in constitutions of countries all over the world, figure on a scale that ranges from animosity between state and religion on the one extreme side, to an identification of state and religion on the other extreme side. Both extremes are rejected, on the grounds that they employ coercion and infringe fundamental human rights. The other models are discussed in depth by Winfried Brugger, in order to discover their feasibility to maintain a just and adequate balance between religion and state. In fact, Winfried Brugger has created hermeneutical criteria to help identify the state-religion model, helping, therefore, to construct the rules that should be applied to specific cases and sensitive situations.

Matthew Johnson shows from a Kantian perspective on the relation between religion and state, how religion could avoid conflicts within the state, because religion contributes to the non-violent acknowledgement of duties by developing man’s reason. On the other hand, concerning a comparable subject, Jörgen Huggler states that tolerance is not enough to guarantee the liberty to dissent. Neither acknowledgement of consent nor the rational explanation of principles is sufficient;

1 He hereby expresses his thanks to Ari Solon, who was willing to take over the organisation of the Special Workshop during and after the congress, up to the editing of several papers into the articles that are presented here in this volume.

therefore a demand is made for state regulation of it. So, according to Jörgen Hugler, freedom and religion do not amount to indifference.

Corroborating from an anthropological view that indifference should be set aside where religion is concerned, Remigius Orjiukwu exposes the missionary and social features of each and every religion, since they require contact with others and need the recognition of others; however, the attitude that aims at convincing the other should be non-violent. Ignoring man's religious feature amounts to denying a responsibility of the state.

Observing the modern state and legal positivism, Ari Marcelo Solon studies the matter related to the legal limitations and the presence of sources originated from ancient laws through a pragmatic method. So, within the rule of law that coordinates individual decisions there are elements of ancient law, which do not set aside, therefore, the permanence of religion within the State.

Lastly, Anthony Santoro's article should be mentioned regarding the conflicting issue between the Bible and capital punishments that are incumbent on the jury, since legal hermeneutics present in such trials evidences strong religious influence. Hence the discussion about the impartiality of the jury, since legal construction often resorts to biblical sources; consequently, the tension among state, law and religion is noticeable in such situations.

In brief, in light of the questions raised in this Special Workshop, we can see how the following articles present several perspectives on how the problem of the relation between state and religion can best be addressed, thereby contributing to a better understanding of actual issues in (post)modern and pluralist society.

Citing the fulfilment of the individual as a common goal of religion, law and the state, and demonstrating the handicaps of law and state in achieving this goal, Remigius Orjiukwu emphasizes the indispensable role of religion in the society. He further contends that religion, building on the nature of the human being as a „being with“, is necessarily missionary. The state cannot ban it from public life without ignoring her primary duty of aiding the fulfilment of the individual and needs the religion to fulfil this duty.

Ari Marcelo Solon, Bart Labuschagne