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RELIGION IN THE PUBLIC SPHERE: IS THERE A COMMON EUROPEAN MODEL?

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Abstract: In order to see whether there is a common European model that gives a place to religion in the public sphere two issues have to be taken into account: first, if there is a theory of secularization that accurately describes the current situation of European societies and second if, there is a European model on Church – State relationship. The first part is dedicated to the different accounts on secularization that may be applied to European countries: the classical Weber theory that view secularization as an “iron law” of any society, the institutional secularization, secularization as the decline and adequacy of religious practice, the continuation of the classical theory in the 60’s and beyond, the criticism of this theory and the particular argument of the increase of fundamentalist religious movements. The attempts to formulate new theories on secularization based on other assumptions than the classical one are also presented. The increased presence of religion in private life does not mean a decrease of religion in the public space but rather a new definition of it. Despite the different intensity of belief in national terms, some trends like “believing without belonging” are common, meaning that secularization could have a single meaning in Europe, apart from other continents. The second part starts with presenting the three types of Church - State relationship at the national level. All these have in common the fact that the state is neutral towards religious subjects, a religious subsection is singled out within the public sphere and the state has the right to intervene in this area only as an arbiter. There is already a European law on religion and this statement is supported by examples from the Lisbon Treaty, The Charter of Fundamental Rights, different Directives and decisions of the European Court of Justice. Common rules on religion agreed at the European level helps better to understand why there is a common European model on religions, different from the national models. After taking into account the two aspects described above, a common European model on religion in the public sphere emerges as a necessary conclusion.

Key Words: Charter of Fundamental Rights, Church – State, common European model, Directive, Europe, European Court of Justice, Lisbon Treaty, public sphere, religion, secularization

Is secularization a trend of the modern European societies?

Preliminary questions

In order to determine the relationship between secularization and modern European societies and to answer the question whether or not secularization is an “iron law” that acts upon these societies, several questions have been raised over time with several explanatory models being created. We will try to present these preliminary questions without concluding that the answers given so far cover the problem in depth. The main question that arises is whether a general theory of secularization can be made, which applies to all national and religious contexts or whether each such context has developed its own relationship with the secularization phenomenon. Another important question is whether a history of secularization can be identified¹ or if the evolution of secularization is divided during several periods in history. In other words, is secularization a process with a definite beginning and a predictable evolution? Equally important is the question if the decrease in religious practices in Europe is a sign of secularization or not. Are phenomena such as having religious feelings without participating in these rituals or taking part without such feelings specifically European or universal? If they are indeed specifically European, what is their relationship with secularization - are they a result of secularization or not? Does secularization affect other religions or just Christianity? If we accept secularization as an inevitable phenomenon that reflects on all modern societies, is the European case the rule and the American one, of religious vitality, the exception, or vice versa? Does the emergence of fundamentalist religious movements contradict the idea of secularization seen as an “iron law” or is it rather the exception that confirms the rule? How accurate is it to talk about religious supply and demand and what are the consequences of using this paradigm for the interpretation of secularization? Is it possible to do a double correlation, first between the European model generally characterized by the existence of a major national religion and therefore a low religious offer and low participation in religious rituals and, on the other hand, between the American model characterized by religious pluralism which denotes a more substantial offer? Throughout the history of European societies does only the way of relating to religion change or do religions themselves in their content also experience changes? Accepting that religion can be understood and/or only by reference to cultural and/or political traditions, does the concept of secularization become an inadequate explanatory model? What is the relationship between secularization and desecration, in other words does a society which ceases to prioritize the sacred automatically become secularized?

The mere enumeration of these preliminary questions to the main interrogation that we try to find an answer, namely if secularization describes the modern European societies, shows us that a definitive answer to the latter can not be given. After laying out these preliminary questions and the different ways in which authors have formulated and attempted to answer, all we can do is simply to clarify the possible meanings associated with the above question.

In order to expose the theories related to secularization we will use a classification that belongs to Kevin Schulz, which we have adapted, as the author's attempt is, in our opinion, necessary but not complete².

The classical theory of secularization in the early twentieth century

According to Max Weber's views, presented in *The Protestant Ethic and the Spirit of Capitalism* (1904) and in *Economy and Society* (1933), the Enlightenment generated a rational view of the world and consequently diminished the role of religion. In this respect secularization is a tendency of modern societies, in the same way as bureaucratization or urbanization. Emile Durkheim can also be integrated in this orientation considering the ideas in *Les formes élémentaires de la vie religieuse* (1912). Durkheim believes that religion is not just a system of ideas and beliefs (as did Weber), but a "system for action" involving symbolic ceremonies (birth, marriage, death, etc.). The religious rituals function to maintain social cohesion. Emile Durkheim characterizes industrial societies through "functional differentiation" in the sense that different organizations or individuals act in areas like health, education, politics, etc., taking the place traditionally played by the Church.

Institutional Secularization

The institutional secularization theory is based on a strict definition of secularization, in the sense of the separation of the Church from the State. Considering this definition, the institutional theory of secularization, in the opinion of some authors such as Ralf Dahrendorf or C. J. Sommerville³, is limited to the confiscation of the goods owned by churches (the Catholic Church in France after the revolution in 1789; a similar event takes place in Eastern Europe with the Orthodox Church in the nineteenth century - see "the secularization of monasteries' fortunes" in the Romanian principalities in the reign of Cuza⁴). This theory has been applied by some authors such as George Marsden to other institutions such as universities that went through a process of secularization in the sense of not being controlled by religious authorities⁵.

Secularization as the decline and adequacy of religious practice

The theory of secularization based on the reduction of religious practice because of their suitability to various social and historical contexts belongs to Talal Asad and is a criticism to the anthropological study of religion proposed by Clifford Geertz. According to Geertz, this view on religion has two distinct components: an analysis of the system of meanings embodied in religious symbols, when religion is equalized with this system and the relationship between the system and the social-structural and psychological processes⁶. To Talal Asad, the religious symbols (especially those derived from the sacred texts) are forms of expression of meanings and these meanings can not be conceived independent of the social context in which they are used. The religious symbols can be understood only by reference to the interpretation of the social disciplines. The analysis of religious symbols can not be separated from their relationship with the symbols that have no religious nature. This does not mean that the religious symbols are in a direct relationship of support or opposition to the dominant political power at a given time within a society, but only that the religious practices and discourses are found in the areas where the representations and the religious symbols shape their identity. The religious practices are not just social phenomena but their status of authority is the product of some historical developments⁷. To confirm this hypothesis, Talal Asad analyses the evolution of religious practices in Christianity and in Islam to conclude that we take part in arranging them according to their social and historical context in which they occur, adjustment which decreases their initial content.

Continuing the classical theory of secularization in the 60's and beyond

Weber and Durkheim's theories about secularization have long been regarded as true axioms, able to explain the reasons which seemed to lead ultimately to the disappearance of religion from the public space. C. Wright Mills said that in 1959 "secularization as a historical process resulted in the reduction of the sacred domination ... the sacred shall disappear everywhere except in the private domain"⁸. For authors such as A.F.C. Wallace⁹ secularization and modernization are two processes that take place in parallel, societies inevitably progressing towards a higher degree of modernity, which automatically means a higher degree of secularization. Other authors such as Peter L. Berger or Thomas Luckmann in the same period of the 60's use the validity of the premises on which the classical theory of secularization is based on, but add the idea that even in the presence of increased secularization, religion did not cease to be a

source of moral authority. In a book published in 1967¹⁰ which is actually an application of the sociology of knowledge to the phenomenon of religion, previously developed in a book written with Thomas Luckmann¹¹, Peter Berger believes that secularization was originally used to describe the transition from ecclesiastical authorities' control over certain territories to political control. For Berger secularization is a concept with ideological connotations, both Marxist and Christian. Despite these connotations, it is possible to consider secularization as an empirical phenomenon. Berger believes that a historical analysis of secularization can be done without it being reported to the creation and the evolution of Christianity, which means that secularization is not necessarily related to the increase or the reduction of the religious feeling and practice. Secularization is for Berger "the process by which areas of society and culture have been freed from the domination of religious institutions and symbols". Berger takes into account several meanings of secularization, considering that it manifests in areas such as separation of Church and State, expropriation of the Church properties or the emancipation in education under the ecclesiastical authority. The proof of the secularization of modern societies is in Berger's view "the decline of religious content in art, philosophy and literature" as well as "the portrayal of science as an autonomous and totally secular perspective on the world". However, secularization is not evenly distributed: it can be more easily observed in Europe than in America, but in the latter case the reason for maintaining the religious institutions' authority is given by their increased level of internal secularization, so that "the European and the American cases are two variations of the same phenomenon of global secularization"¹². For Berger secularization is subjective - meaning that religion is less important in the private sphere of the individual - and objective - the great religions are in competition with each other but with different ideologies, which makes their influence become increasingly low.

In a book published in the same year as that of Peter Berger's, Thomas Luckmann¹³ believes that secularization is the result of some profound social changes and not merely of the decline of some expressions of religious feeling. Regardless of the historical period, there is an "invisible" religion, originating in the private sphere, based on objective human feelings.

Currently no author considers the classical theory of secularization, as seen by Weber and Durkheim and also found in Berger and Luckmann's reformulation, as an explanatory model *per se*. Even those who base their research on this paradigm find it very difficult to define the concept of religion in a general sense. An example in this respect are Steve Bruce and Roy Wallis, who say that secularization depends on the distinction between the functional and substantial definition of religion, meaning between the solutions it offers and what religion signifies. In addition, these authors believe that there are many elements of modernity

(differentiation, rationalization and society), which the secularization theory should take into account¹⁴.

The criticism of the classical theory of secularization

Although there have been critics of the classical theory of secularization even since the authors embracing this trend were publishing their theories, among which we should mention David Martin¹⁵, Larry Shiner¹⁶ or Andrew M. Greeley¹⁷, it is only in the 90's that a coherent criticism of this theory appears. Among the first authors who began to criticize the classical theory of secularization we surprisingly find one of the leading advocates of it during the 60's, Peter L. Berger. In a 1999 book he said that "all the literature produced by historians and specialists of social sciences called 'the secularization theory' is fundamentally wrong"¹⁸. The critics of the classical secularization theory say that if we define secularization as a decline in religious practices in the modern societies, this theory is not confirmed. In addition, the classical secularization theory would be based on a false premise, namely that nowadays religion is far less present in the public space than in the past. The criticism of the classical theory of secularization refers only to the evolution of religious practices, and not to other issues such as the institutional secularization, the cultural one (the transformation of religious symbols) or the social secularization (according to which religious beliefs generate social solidarity, and their absence social conflicts). The advocates of secularization refer to these aspects to counter the criticism.

One of the most consistent critics of the classical theory of secularization belongs to José Casanova. He starts with the observation that the secularization paradigm is the main theoretical framework used by social sciences to refer to the relationship between religion and modernity. The contradiction between those who see secularization as an inevitable process and those who propose an alternative paradigm takes into account only one aspect of secularization. In fact, Casanova says, there are three dimensions of secularization that help establish three theories independent of each other: secularization as a differentiation of the secular sphere from the religious norms and institutions, secularization as the decline of the religious feelings and practices, secularization as exclusion of religion in the private sector¹⁹. The debate regarding secularization should be focused around the three dimensions and analyzed separately, which means that we are dealing with a concept which should not be abandoned, but refined. Based on the analysis of the three components of secularization into five case studies involving four countries (Poland, Spain, Brazil, Protestants and Catholics in the United States), Casanova concludes that the first component, that of secularization as differentiation is the core of the theories about this

subject. With these case studies, Casanova apparently reaches a surprising conclusion: those religions which have lasted longer after the separation between Church and State, especially those in Europe, face a more acute pressure of modernity. In the places where this confrontation is stronger, there is a decrease of religious vitality. Therefore, the decline in religious practice in Europe is not the result of secularization, but of the peculiarities of historical development of relations between Church and State. Casanova's analysis introduces a new phrase to us, of the "modern public religions": it is the case of those religions which recognize the freedom of conscience as an inviolable right and thus they are able and willing to participate in the public sphere, where the other religions can not claim to be actors. This distinction has led to an interesting dispute between Talal Asad and José Casanova. Talal Asad states that any religion can be part of the public sphere and, moreover, the recognition of a religion as an actor of the public sphere makes the very criteria of structure of the latter to change²⁰. Casanova answers Asad's critics in a book where different authors treat many aspects of the thinking of the latter and also contains Asad's response to the criticisms that are brought to him²¹.

In Talal Asad's book mentioned above another criticism of the classical theory of secularization can be identified. In his view, the secularization theory assumes a direct relationship between religion and secularization, a premise which is partially true. In Asad's opinion, secularization does not complement religion, nor does it signify a split from it. The present secularization is for Asad "a concept that brings together certain behaviors, modes of knowledge and sensibilities of modern life". In most cases we can talk about the secularization in relation to religion, but there are situations where this is not possible. There is an ongoing confrontation between secularization and religion, concepts whose definition varies with time and new meanings arise from this confrontation between language and religious practices. The secular political practices do not replace the religious ones, as nor the religious ones claim to be in the place of the first ones, but there is always a process of mutual exchange. The evolution of the interpenetration of the two ways of practice for Talal Asad is a separate discipline, called "the secularization anthropology"²².

In Asad's view, the historical process of secularization is a "remarkable ideological inversion". The concept of "secular" (*saeculum*) was part of theological discourse, and only later became general, while the concept of "religion" is composed of "scientific speeches and secular politics". Thus, religion and secularization are now universal concepts. Therefore, secularization is not only linked to Christianity in Europe, but it is universally applicable to all religions²³. This view was challenged by José Casanova, who believes that secularization is not a concept that can be applied to some religions such as Confucianism and Taoism which would

not be characterized by a tension between the sacred and profane, as their model of transcendence is not necessarily of religion nature and they do not have an ecclesiastical organization²⁴.

The increase of fundamentalist religious movements as an argument against the classical theory of secularization

The classical theory of secularization has been criticized not only by means of theoretical arguments but also by studies based on anthropological research, that examines on the one hand the emergence and growth of some fundamentalist religions and on the other hand the transformation into a fundamentalist direction of some religions which do not have this trait, as they are phenomena that occur in parallel with modernity. Religions covered by these studies are the Orthodox Judaism²⁵, Protestantism practiced in Latin America²⁶, the Neo-Protestant group of the Pentecostals²⁷.

Attempts to formulate new theories of secularization

Among the authors who have attempted to reinterpret the current role of secularization there are Ronald Inglehart and Pippa Norris. They developed an extremely challenging theory called “the existential security”: according to it the experience of people living in vulnerable societies underlines the importance of religious values, while the experience of those who live in societies with a high degree of safety and a high standard of living are not conducive to these values. The authors start from the observation of a record which is verified by using a large number of statistical data: in most developed countries the membership to the Church and the authority of religious leaders is in decline (except the United States, where the emphasis on missionary, social disparities and immigration of people from traditional societies result in a slowdown of secularization). The authors' conclusion is that religion has not disappeared, and secularization can be seen as a trend and not as an “iron law”. The role of religion in contemporary modern societies can be characterized as follows:

- a) people in almost all industrial societies have manifested secular tendencies in the past 50 years;
- b) the world as a whole currently comprises more people with traditional religious orientations, compared with any previous historical era²⁸.

Inglehart and Norris's forecast is that the gap between societies with a low degree of “existential security” and the religious ones in which this type of security is much more present, will increase in the near future triggering unpredictable political consequences²⁹.

Another contribution brought by Inglehart and Norris to the theories of secularization is the use of analysis based on the relationship between religious supply and demand. Thus, there are national cultures in which there is a greater supply of religion, generated by many religious actors who are competing to attract believers. A greater religious supply attracts a low degree of secularization in the sense that the degree of belonging to a religion or another becomes higher. In other national cultures secularization is more pronounced because religious supply belongs to a smaller number of actors. Inglehart and Norris believe that the demand for religion is constant in any society, whether it is premodern, traditional or modern, while the level of religious participation varies from one national context to another, depending on the number of religious actors and the quality of their offer. In this way the authors explain the differences in affiliation and religious participation between Europe (at the level of national states there is, in most cases, a religious monopoly by a single religion) and the U.S. (with a higher degree of religious pluralism than in Europe, generating a more diversified religious offer)³⁰. It should be noted here that the secularization analysis based on religious supply and demand theory does not belong to Inglehart and Norris. These authors have developed a theory launched in the 70's by Pierre Bourdieu and have carried out research based on the sociological data to test this theory. According to Bourdieu, the religious institutions (churches, faith communities, etc.) and those belonging to them own a religious capital that is committed to achieve "the monopoly of salvation management" and the legitimate exercise of religious authority. This religious capital in Bourdieu's view depends on the religious demand and supply that come from people and religious institutions³¹. What Inglehart and Norris bring new in this theory is that the level of religious demand is considered to be constant, irrespective of the cultural or political context while in Bourdieu's analysis both demand and supply can vary.

Another attempt to deflect from the dispute centered on the validity of the classical theory of secularization belongs to David Martin. In his book "A General Theory of Secularization" Martin assumes that religion is a broader concept that also encompasses the way it interacts with various cultural and political contexts and how these interactions evolve with time. Because of this, secularization affects in a different way religions and therefore we can not talk about secularization in general³². Martin was going to test this assumption by analyzing the research done on some fundamentalist movements in Latin America and Africa and later expanded his research area in Europe and North America. In a book published in 2005 David Martin examines the various connotations and features of secularization in Europe and the United States from the perspective on some initially sacred spaces or which have preserved in time their sacred value in cities such as Washington, Paris, Vilnius, Helsinki, Amsterdam to conclude that the religious feelings depend on the

evolution of architectural and cultural perspective on space and time. Thus, according to David Martin, the religious practices depend on the way that the cultural perception evolves which also includes a more or less consistent religious component upon spending time in private or public spaces³³.

One of the most recent theories on secularization belongs to Charles Taylor. His book *A Secular Age* extensively analyzes in almost 800 pages the transformation of Christianity in Europe, from its origins to the present. The question that Taylor tries to answer is in what manner is it possible to cross from a situation in which there is no alternative to believing in God to a situation in which it becomes an alternative among many others³⁴. Taylor believes, in contrast to the classical theory of secularization and to those who have challenged or brought amendments to it, that in reference to religion we are not dealing with a one way transformation, but with a series of transformations and new beginnings in which various forms of religious feeling have appeared and disappeared successively. This paradigm of interpretation leads to the conclusion that there is not only one form of secularization, but many that depend on various contextual experiences marked not only by religious, but also by moral and spiritual ones. Thus, the secularization history is divided in the history of several periods with a high or low degree of secularization. Taylor considers secularization in the European context as being directly influenced by changes in the perspectives of theology and philosophy. These changes occur in two forms in Taylor's opinion. The first type of change that affects the secularization is "the intellectual deviation", a movement of ideas started within Christianity which reaches to get outside it and the second is the "mainstream reform" that changes the expression of faith but still ends up inside the Christian religion. Secularization occurs against the backdrop of ongoing fighting between these two types of changes.³⁵

A theory that does not relate directly to secularization but deals with this issue in a manner very different from the ones mentioned above and has implications on how secularization can be analyzed, belongs to John Gray. The premise from which his book *Black Mass. Apocalyptic Religion and the Death of Utopia* begins is that the whole modern policy is nothing but a chapter in the history of religions. The title chosen is very suggestive: *black mass* is a satanic ritual in which the Christian liturgy is played backwards, as "secular religions" - radical political ideologies - borrow, consciously or not, from the religious feelings which they deny. Gray covers not only Christianity, but his vision is situated in the broader context of religious eschatological visions, some of which precede Christianity. The decrease of the religious feelings, at least in a European context, is attributed by Gray on the fact that the mass political movements of the twentieth century were vehicles for myths inherited on the religious branch. Once these movements have succumbed, religion revives, and the modern hostility towards religion, after leaving the scene

of “the secular religions” is actually, in his view, a reaction to the inversion of roles. However, “the secular religions” do not disappear from history, but their intensity is lower, and the forms in which they appear are different. The radical negation of religion can not be done by specifically religious means only, whether they are acknowledged or not by those who practice this type of approach. According to Gray Atheism has the fact that it wants to be a universal project of salvation in common with Christianity and also Islam. The categories with which religion operates are borrowed from the secular thinking. The belief in progress, a specific trait of modernity, is nothing but a reflection of the Christian vision upon history, even if he sometimes radically denies any role for religion. The attempt to eradicate the religion thus leads to its reappearance and the secular myths reproduce “the narrative form” of Christianity. Gray believes that at least in the last two centuries religion has competed with “the secular religions”, based on the idea that anarchy and tyranny can end, as well as the Christian religion is based on a given historical goal of universal salvation. Christianity has an advantage over “the secular religions” which helps it survive after these have failed: it puts in its center the mystery of creation and it does not provide the hope that this mystery will be revealed³⁶.

There are other theories about secularization, different from the classical paradigm and from the criticism that is worth being mentioned:

Secularization as desecration. For Sabino Acquaviva³⁷ secularization is not necessarily accompanied by desecration- reducing the direct experience of the sacred. The author uses some indicators that highlight the decline in the religious practices in European societies; they only express the reduction of practices, but not the religious experience. What happens now is just the reduction of the institutional oriented religiosity; the religious experience outside of the places of worship can not be measured by objective indicators.

The secularization as demythisation. In Bryan R. Wilson’s view³⁸, religion has more features for the modern man. Besides the obvious one - to give perspective on salvation - there are other latent ones. Because of modernity, this last category of functions disappears: religion is no longer a factor for social integration of communities, due to the massive emigrations that bring a new dimension of religious pluralism; concepts such as power, justice or war are not legitimized by religion, but tend to self-legitimize. Religion is present in modernity not because of its functions but due to its obvious position. No social or political integration system can provide an answer fully accepted by the human needs. In his analysis, Wilson relies on Max Weber’s interpretation that explains the process of demythisation as progressive rationalization of the many dimensions of life. According to Wilson, secularization is the demythisation of the world carried out with varying degrees of intensity by the main religions of modernity.

The application of secularization theories to the European case

Considering Ronald Inglehart and Pippa Norris's views we would be tempted to believe that secularization is a specific phenomenon for the modern European societies, which corresponds to the historic evolution of them. However, in other societies lacking "existential security", religious values have a growing impact. Inglehart and Norris did not aim to make an analysis of the interaction between the two types of societies. They exist and can not be denied. The absence of "the existential security" among the states outside the European continent is a phenomenon that can be, in our opinion, easily induced to developed societies, due to the interaction between "sacred" and "secular" states. These interactions have been increasingly present because of phenomena eluding state's control - free movement, people migration, the globalization of national economies, the emergence of terrorist networks with trans-national branches. We do not exclude that eventually the consequence of these interactions will lead to an even spread of a type of "existential insecurity" and to a gradual decrease of the secularization process for the Western societies.

Some European states (particularly France and Great Britain) have experienced a deep transformation process, from being missionary states in the beginning to becoming the opposite. Actions for promoting different religions that have started in other areas are occurring on their territory, thus adding a symbolic dimension to the economic one of globalization. Regarding the economic globalization, the answer given by religion should be, according to Hans Küng, the creation of a global *ethos* (*Weltethos*). This does not represent a single global religion, but rather a "necessary minimum of values, criteria and fundamental human attitudes which are needed in order for human kind to be able to survive", which can not come from anywhere but religion³⁹. The symbolic dimension of globalization helps not only the inter-religious dialogue, but also the one between Christian cults, which may lead to positive effects, such as the emergence of a common European model for understanding the religious phenomenon. The extension of the means of communication encourages this type of symbolic globalization - it is nowadays possible to receive through television, press and Internet religious information and messages coming from all the religions of the world, without having to leave the comfort of your home. The current religious phenomenon at a European level is characterized by two centrifugal tendencies: on the one side, a more consistent presence in private space and on the other side an invasion of the public space with different religious symbols of a more or less European tradition. Hence, religion within intermediate structures - at national, regional or local levels - is more and more questioned. Religion is increasingly a part of the European public space, especially because of the growing presence of religious minorities (especially Islam), who consider it an important part of the public area. So, the religious situation

in Europe will remain further on apart from the one on other continents, especially because of the unique historical heritage, which does not mean it is permanent and that the role of religion will remain unchanged. Due to the rise of emigration, it is more likely, according to Grace Davie, for traditions and cultures outside Europe to influence the confessional scenery than the opposite situation⁴⁰.

One of the cultural aspects typical to the European society is the returning of forms and expressions of the sacred in a seemingly secular and laic⁴¹ context. The religious dimension of human existence has not lost its social meaning or its cultural strength, due to the fact that the optimistic view of the project on modernity has highly decreased nowadays. The secularization of European societies should therefore be regarded as a historical phenomenon with limited application; new types of sanctification can emerge at any given moment. This is the conclusion also drawn by different authors who studied the religious phenomenon, such as Mircea Eliade or Rudolf Otto - the modern person is falsely secularized. The decrease in participation at religious rituals in Europe should not be viewed as a sign of secularization, but rather a sign of what Grace Davie called "*believing without belonging*" - believing without belonging to a religion or participating at rituals⁴². The Europeans have not lost their religious feelings but they do not portray them in an institutionalized way. These feelings are obviously not equally spread (a high level of religiousness is noticeable among Catholic countries from the South and among the Orthodox ones, unlike the Protestant countries in the North), yet in general, the level remains constantly high. Another phenomenon that occurs in Europe at the same time with the one described by Davie is, in the author Danièle Hervieu - Léger's view, "*belonging without believing*" - formally belonging to a religion by participating to rituals without having religious beliefs. The explanation for this phenomenon resides in the constancy of a national collective memory in which religion has had an important role and occurs in some countries such as Denmark, through the payment of taxes towards the Lutheran Church, even by those who do not believe in God or do not participate regularly at church services⁴³.

Church and State: from national models towards a European perspective

The law related to Church and State in the European Union is named by Gerhard Robbers "*civil ecclesiastical law*"⁴⁴ a translation of the German term *Staatkirchenrecht*. The law systems of the EU Member States are diverse because they mirror the diversity of the national cultures and identities. New Member States as Romania and Bulgaria have added specific historical and legal experiences in this area, as well as new needs concerning regulation on religion and preservation of religious beliefs.

These countries bring specific experience for the European Union: state interference in and against religion, the role of religion in the transition process and the support of the religions to the European integration effort of the State, issues related to the property restitution had particular significance in both countries.

We must not ignore also the contribution made by Islam and Judaism to European culture. Both religions are important in the EU Member States today and they receive special consideration from the part of Church – State law. In Romania and in Bulgaria these religions were a very important factor of social life in the past and they are still taken into consideration in designing the current public law rules.

The differences between Church – State systems in Europe are a consequence of the 1054 Orthodox – Catholic schism, the Reformation and the wars of religion of the 16th and 17th centuries. Some States (Spain, Portugal) remained untouched by these later events, but the Reformation prevailed in other countries and sometimes established a system limited to the existence of a State Church (the Scandinavian states). Countries like Romania, Bulgaria or Greece succeeded to keep the Orthodox faith as the majoritarian Church, although other religions, such as Catholicism and Islam, played an important role in the process of designing the modern state.

There are three type of Church – State relations in the European Union. The first is characterized by the existence of a State Church or predominant religion and therefore close links are established between State authority and Church existence (United Kingdom, Denmark, Greece, Malta and Finland). The second type is founded on the strict separation between State and Church – France, with the exception of three eastern administrative departments and the Netherlands. A legal separation exists in Ireland but the practices are far from the written law, so the country cannot be integrated in this category. The religious influence of the State in mainly Catholic Ireland is stronger than the wording of Constitution may suggest. The third type is based on a separation of State and Church on basic issues, while many tasks are assigned in common to Church and State (Belgium, Poland, Spain, Italy, Hungary, Austria, the Baltic States and Portugal). Agreements between state and religious communities play an important role and we may find in the states that belongs to the last type a covenantal system of Church – State relations. According to Robbers, the existence of these agreements must not be overestimated because they reflect a previous system of cooperation rather than they establish it.

In the process of European integration both Romania and Bulgaria realized that they have to put the Church – State law system on a renowned basis, even if the European Union does not ask for new rules in this area as a prerequisite for membership. Bulgaria adopted a new law in 2002 and Romania in 2006. According to these new laws, Bulgaria may be included in the first type of Church – State relations, while Romania

chooses to be included in the third type. Even if the Orthodox Church is the predominant religion in both countries, the relationship with other religions is differently described by law. This proves that the systems of Church – State relations in Europe are very different even if some of them are the result of a comparable historic tradition.

Despite all the differences between the systems there is some convergence. These different systems of Church – State law have common roots as there is an experience of shared history in Europe. All the Church – State systems in the European Union are based on a common heritage – the Christianity. Public and private law, as well as “civil ecclesiastical law” on the EU Member States are rooted in Christianity.

In the Member States of the European Union there is a common model of relationship between the state and religious faiths. Authors like Lasia Bloss⁴⁵, Francis Messner⁴⁶ or Alessandro Ferrari⁴⁷ call it *droit des religions européennes*. According to Silvio Ferrari⁴⁸, this common European model appears to be defined by the following coordinates:

- the state is neutral (impartial toward the various individual religious subjects);
- a religious subsection is singled out within the public sphere. This is a “protected area”. Inside it the various collective religious subjects (Churches, denominations and religious communities) are free to act in conditions of substantial advantage compared to those collective subjects that are not religious;
- the state has the right to intervene in this area only to see that the players respect the rules of the game and the boundaries of the playing field.

From Dorsen, Rosenfeld, Sajó and Baer perspective⁴⁹, impartiality of the public power, internal autonomy of the religious communities with greater protection than that afforded to other associations (including support for some of their external religious activities), and limits to public manifestations of religion for reasons of public order, health, morals, or for the protection of the rights and freedoms of others are the main characteristics of European Church – State relations⁵⁰.

Church – State law is increasingly part of the law of the European Union. Primary Community law excluded the civil ecclesiastical law for a long time, but new developments show the awareness of the religious dimension in the organization of the European Union. The apparent exclusion of Church – State law from the founding Treaties of EEC is due to the nature of European unification, conceived as an exclusive economic process. As far as the economic unification is advanced, other fields of law became part of the *acquis communautaire*.

Even when the European unification has been regarded as a strict economic process, religion was not excluded from the impact of the primary Community law. The economic activity pursued by a Church or a religious association is falling under the control mechanisms of the European Commission. Activities run by Churches, such as confessional hospitals, kindergartens, schools, etc. are under the control of DG Competition⁵¹. There is no general exemption in the primary Community law for these activities, as for other areas expressly mentioned in the Treaties.

There is a general prohibition of state aids in the primary Community law, but an exemption is possible for “aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest”. This provision means that national governments may support financially the conservation of religious monuments and this could not be interpreted as “state aid” in the meaning of the primary Community law.

Since the Maastricht Treaty the cultural and social dimension of the European unification were taken into consideration. Art. 2 of the Maastricht Treaty state that the amelioration of the quality of life is a task of the EU. Therefore, the Union acquired new competences in education, culture, labour, tax and social law. All these fields affect the Churches.

Religious freedom is now an important element of the EU law. The principle of respect for the constitutional structure of Member States prohibits assimilation of the Church – State law into the EU law. The principle of subsidiarity regulated for the first time in the Treaty of Maastricht requires indirectly a reticence on the part of the EU with regard to the regulations on religion.

The European Court of Justice acknowledged the fundamental right to religious freedom even since 1976 (*Prais v. Council*⁵²). Issues of labour law affecting the Churches were raised in the 1986 case of *Van Rosmaalen v. Bestuur van de Bedrijfsvereniging*⁵³. According to the *Baghwan*⁵⁴ case of 1988, remunerated labour and services in the context of the economic activity of the religious communities is part of the economic life within the meaning of the EU.

The Lisbon Treaty is facing in a direct manner the issue of religion. According to Article 17 of the Treaty on the Functioning of the European Union, part of the Lisbon Treaty, the Union “respects and does not prejudice the status under national law of Churches and religious associations or communities in the Member States” and it “shall maintain an open, transparent and regular dialogue with these Churches and organizations”. Declaration No. 11 of the Final Act of the Amsterdam Treaty is formulated in identical forms with the first paragraph of Article 17. Consequently after the entry into force of the Treaty of Lisbon, religious issues have obtained a legal binding nature. This article is the

most accurate expression of the neutrality of the EU in religious matters but on the other hand acknowledges that Churches are subjected to *acquis communautaire* as long as they participate to the formation of it. The meaning of Article 17 is that EU Member States are completely free in developing their own Church – State law systems.

The Charter of Fundamental Rights of the EU solemnly proclaimed in 2000, adopted in 2007 and having, according to Article 6 of the Treaty on European Union, part of the Lisbon Treaty, the same legal value as the Treaty of Lisbon guarantees freedom of religion (Article 10) and prohibits discrimination on grounds of religion or belief (Article 21). According to Article 22, the Union respects the multitude of cultures and religions.

Also the secondary Community law takes into consideration religious issues. According to Directive 95/46/EC⁵⁵ “Member States shall prohibit the processing of personal data revealing [...] religious beliefs” (Article 8). Council Directive 2000/78/EC lies down a general framework for equal treatment in employment and occupation⁵⁶. According to Article 4 of this Directive, Churches may maintain established standards of choosing their proper staff “by reason of the nature of these activities or of the context in which they are carried out, a person’s religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organization’s ethos”. The same Article affirms that this Directive does not prejudice the right of Churches “to require individuals working for them to act in good faith and with loyalty to the organisation’s ethos”.

The Audiovisual Media Services Directive 2010/13/EU⁵⁷ forbids any inclusion or promotion of discrimination based on religion by media service providers under the jurisdiction of EU Member States (Article 9). During religious programmes EU Member States may choose to prohibit the showing of a sponsorship logo (Article 10, para. 4) and during religious services no television advertising or teleshopping shall be inserted (Article 20, para. 2). These are only the most important aspects of the secondary Community law dealing with religion, others regulations may be quoted as well.

The future of European unification lies also on the developments concerning the Church – State law systems and also the common European model on religion. Securing a long-term future of the European Union means to anchor the economical and political achievements of more than five decades since the Treaty of Rome in culture, tradition and history and implicitly on religion. The future development of the common European model on religion must not eradicate the differences between religions. This objective may be attained only if the principle of subsidiarity (which does have religious roots) will be better acknowledged and used.

Notes:

¹ A positive response seems to be given by Simona Nicoară, who writes a history of secularization covering the centuries XIV - XX, without an analysis of the possibilities and significance of this following fragment: The historic investigation of the trajectories of secularization signifies entering a complex, religious, mental, intellectual, cultural, social and political dimension, for all these aspects lead to the enlightenment of the complexity of living. It is very difficult to capture this in an explanatory model, but the aim of the historic is that of creating the model in an explicit and even fascinating manner” (*O istorie a secularizării - De la Cetatea lui Dumnezeu la cetatea oamenilor*[*A History of Secularization - From the City of God to the City of Men*] - vol. I (Cluj – Napoca : Accent, 2005), 10 ; see also *Idem*, *O istorie a secularizării - Avatarurile creștinismului și triumfalismul mesianismelor noilor ere* [*A History of Secularization - The Avatars of Christianity and the Triumphalism of the First Ages Mesianismes*] - vol. II (Cluj – Napoca : Accent, 2006).

² Kevin M. Schulz, “Secularization: A Bibliographic Essay”, *Hedgehog Review*, Spring/Summer 2006: 170 - 177.

³ Ralf Dahrendorf, *Class and Class Conflict in Industrial Society* (Palo Alto: Stanford University Press, 1959); C. J. Sommerville, “Secular Society Religious Population: Out Tacit Rules for Using the Term Secularization”, *Journal for the Scientific Study of Religion*, 2 (37) (1998): 249 - 253.

⁴ For a recent interpretation of this episode and its consequences, see Ionuț - Gabriel Corduneanu, *Domnia lui Alexandru Ioan Cuza și reglementarea legală a primelor forme moderne de sprijinire instituționalizată a Bisericii de către Stat*[*The ruling of Alexandru Ioan Cuza and the legal framing of the first modern forms of institutionalized subsidies of the Church by the State*], în *Biserica Ortodoxă Română și Unirea Principatelor* [*The Romanian Orthodox Church and the Union of the Principalities*], (București: Editura Cuvântul Vieții a Mitropoliei Munteniei și Dobrogei, 2009): 258 - 265.

⁵ George M. Marsden, Bradley J. Longfield, eds., *The Secularization of the Academy* (Oxford: Oxford University Press, 1992); George M. Marsden, *The Soul of the University: From Protestant Establishment to Established Nonbelief* (Oxford: Oxford University Press, 1994).

⁶ Clifford Geertz, *The Transformation of Cultures*, (New York: Basic Books, 1973).

⁷ Talal Asad, *Genealogies of Religion. Discipline and Reasons of Power in Christianity and Islam* (Baltimore: The Johns Hopkins University Press, 1993), 53 - 54.

⁸ C. Wright Mills, *The Sociological Imagination* (Oxford: Oxford University Press, 1959), 32 - 33.

⁹ A. F. C. Wallace, *Religion: An Anthropological View* (New York: Random House, 1966).

¹⁰ Peter L. Berger, *The Sacred Canopy: Elements of a Sociological Theory of Religion* (New York: Random House, 1967).

¹¹ Peter L. Berger, Thomas Luckmann, *The Social Construction of Reality - A Treatise of Knowledge* (N.Y.: Doubleday, Garden City, 1966).

¹² Berger, Luckmann, 106.

¹³ Thomas Luckmann, *The Invisible Religion: The Problem of Religion in Modern Society* (London: Macmillan, 1967).

- ¹⁴ Roy Wallis, Steve Bruce, *Secularization: The Orthodox Model*, in *Religion and Modernization. Sociologists and Historians Debate the Secularization Thesis*, ed. Steve Bruce (Oxford: Clarendon Press, Oxford, 1992), 8 - 30.
- ¹⁵ David Martin, *Towards Eliminating the Concept of Secularization*, in *Penguin Survey of the Social Sciences*, ed. J. Gould (Baltimore: Penguin, 1965), 169 - 182.
- ¹⁶ Larry Shiner, "The Concept of Secularization in Empirical Research", *Journal for the Scientific Study of Religion*, 6 (1967), 207 - 220.
- ¹⁷ Andrew M. Greeley, *Unsecular Man: The Persistence of Religion* (New York, Schocken, 1972).
- ¹⁸ Peter L. Berger, *The Desecularization of the World: A Global Overview*, in *The Desecularization of the World. Resurgent Religion and World Politics*, ed. Peter L. Berger (Washington DC: Ethics and Public Policy Center, 1999), 2.
- ¹⁹ José Casanova, *Public Religions in the Modern World* (Chicago: The University of Chicago Press, 1994), 211.
- ²⁰ Talal Asad, *Formations of the Secular. Christianity, Islam, Modernity* (Stanford: Stanford University Press, 2003), 185.
- ²¹ José Casanova, *Secularization Revisited: A Reply to Talal Asad*, in *Powers of the Secular Modern. Talal Asad and His Interlocutors*, ed. David Scott and Charles Hirschkind (Stanford: Stanford University Press, 2006), 12 - 30.
- ²² Asad, "Formations of the Secular. Christianity, Islam, Modernity", 21.
- ²³ Asad, "Formations of the Secular. Christianity, Islam, Modernity", 191 - 192.
- ²⁴ José Casanova, "Rethinking Secularization: A Global Comparative Perspective", *The Hedgehog Review*, Spring/Summer 2006, 7 - 22.
- ²⁵ Reuven P. Bulka, ed. *Dimensions of Orthodox Judaism*, (New York: Ktav, 1983).
- ²⁶ David Martin, *Tongues of Fire: The Explosion of Protestantism in Latin America* (Oxford: Blackwell, 1990).
- ²⁷ Martin, *Pentecostalism: The World Their Parish* (Oxford: Blackwell, 2002).
- ²⁸ Ronald Inglehart and Pippa Norris, *Sacred and Secular. Religion and Politics Worldwide* (New York: Cambridge University Press, 2004), 3.
- ²⁹ The theory of Inglehart and Norris was positively received, yet criticized for disregarding the possible trends in evolution of societies with a different degree of "existential security" (see the review of G. John Ikenburry's book, *Foreign Affairs*, November - December 2004).
- ³⁰ Ronald Inglehart and Pippa Norris, 83 - 158.
- ³¹ Pierre Bourdieu, "Genèse et structure du champ religieux", *Revue Française de Sociologie*, vol. 12, 3 (1971), 318.
- ³² David Martin, *A General Theory of Secularization* (Oxford: Blackwell, 1978).
- ³³ Martin, *On Secularization. Towards a Revised General Theory* (Aldershot: Ashgate, 2005), 47 - 57.
- ³⁴ Charles Taylor, *A Secular Age* (Cambridge, Massachusetts, London : The Belknap Press of Harvard University Press, 2007), 3.
- ³⁵ Taylor, 773 - 776.
- ³⁶ John Gray, *Black Mass. Apocalyptic Religion and the Death of Utopia* (London: Allen Lane - Penguin Books, 2007).
- ³⁷ Sabino Acquaviva, *L'Ecclisi del sacro nella civiltà industriale. Dissacrazione e secolarizzazione nella società industriale e postindustriale* (Milano : Comunità, 1991).
- ³⁸ Bryan R. Wilson, *Religion in Secular Society. A Sociological Comment* (London: C.A. Watts & Co. Ltd, 1966).

³⁹ Hans Küng, *Weltethos für Weltpolitik und Weltwirtschaft* (Munich: Piper, 2000); this book is a follow up of the author's ideas presented in *Projekt Weltethos* (Munich: Piper, 1990). Among the followers of the theory of the "global ethos" is also the current Pope Benedict the 16th (see Joseph Ratzinger, *Ce ține lumea laolaltă. Fundamente prepolitice morale ale unui stat liberal* [What keeps the world together. Moral prepolitical fundamentals of a liberal state], in Jürgen Habermas, Joseph Ratzinger, *Dialectica secularizării. Despre rațiune și religie* [Dialectics of the Secularization. On Reason and Religion], (Cluj: Apostrof, 2005), 101. For a critical view on this concept, see Robert Spaemann, "Weltethos, als 'Projekt'", *Merkur*, 570 – 571: 893 – 904.

⁴⁰ Grace Davie, "Is Europe an Exceptional Case?", *The Hedgehog Review*, Spring/Summer 2006, 34.

⁴¹ On the phenomenon of "the rebirth of the sacred" and theories regarding this, see Teofil Tia, *Reîncreștinarea Europei? Teologia religiei în pastorală și misiologia occidentală contemporană* [Rechristianisation of Europe? The Theology of Religion in the Contemporary Pastoral and Missiology], (Alba Iulia: Editura Reîntregirea, 2003), 12.

⁴² On this phenomenon, see Grace Davie, *Religion in Britain since 1945* (London: Blackwell, 1994); Davie, *Europe: the Exception that Proves the Rule?*, in "The Desecularization of the World. Resurgent Religion and World Politics", ed. Peter L. Berger, 65 – 83; Davie, *Europe: The Exceptional Case. Parameters of Faith in the Modern World*, (London: Darton, Longman and Todd, 2002).

⁴³ Danièle Hervieu - Léger, *The Role of Religion in Establishing Social Cohesion*, in *Religion in the New Europe*, ed. Krzysztof Michalski (Budapest: Central European University Press, 2006), 45 – 63.

⁴⁴ Gerhard Robbers, ed., *State and Church in the European Union* (Baden – Baden: Nomos, 2005), 577.

⁴⁵ Lasia Bloss, *European Law of Religion – organizational and institutional analysis of national systems and their implications for the future European Integration Process*, Jean Monnet Working Paper 13 (2003).

⁴⁶ Francis Messner, "Le droit des religions dans une Europe interculturelle", *Hermès* 23 – 24 (1999), 62 – 63.

⁴⁷ Alessandro Ferrari, *Religions, Secularity and Democracy in Europe: for a new Kelsenian Pact*, Jean Monnet Working Paper 03 (2005).

⁴⁸ Silvio Ferrari, *The New Wine and the Old Cask: Tolerance, Religion and the Law in Contemporary Europe*, in *The Law of Religious Identity: Models for Post-Communism*, ed. András Sajó and Shlomo Avineri (The Hague: Kluwer, 1999), 3 – 4.

⁴⁹ Norman Dorsen, Michel Rosenfeld, András Sajó, Susanne Baer, *Comparative Constitutionalism – Cases and Materials* (St. Paul: Thomson West, 2003), 995.

⁵⁰ About the European model on religions, see also Radu Carp, *State and Church in the European Union: Towards a European Model*, in *Together in Europe*, ed. Ingrid Shikova (Sofia, 2007), 49 – 54; Radu Carp, *Dumnezeu la Bruxelles. Religia în spațiul public european* [God in Brussels. Religion in the European public sphere] (Cluj – Napoca: Eikon, 2009), 79 – 82.

⁵¹ Bloss, 63 – 64.

⁵² Case 130/75, [1976] ECR, 1589.

⁵³ Case 300/84 [1986] ECR, 3097.

⁵⁴ Case 196/87 [1988] ECR, 6159.

⁵⁵ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995, 31 – 50.

⁵⁶ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2.12.2000, 16 – 22.

⁵⁷ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, OJ L 15.4.2010, 1 – 24.

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