

RELIGION, LAW AND COVID-19 EMERGENCY

Law and Religion during (and after) Covid-19 Emergency: the law is made for man not man for law

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We're not going back to normal said Gideon [Lichfield](#), the editor in chief of MIT Technology Review. And it's likely that, once Sars-Cov-2 pandemic is overcome, an update of the Law and Religion studies will be a new issue to think about as well. Nowadays, in fact, it's easy to see how the traditionally used categories are no longer adequate to understand the reality. We are witnessing a crisis of the “vertical” configuration (or “vertex-shaped”) of religions’ public law, built on a pact-related model¹. On the other hand, the thought of a horizontal setting for the Law and Religion studies is becoming stronger and stronger: a new dimension, that “encloses diverse possible expressions of the human spirituality, the ones related to choices of faith and the ethical ones, also

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¹ [Pacillo](#), for instance, highlighted the Italian context, where the suspension of the constitutionally-guaranteed fundamental freedoms has “overwhelmed” the concordat system. V. Pacillo, *La sospensione del diritto di libertà religiosa nel tempo della pandemia*, in *Oliv*, 16 marzo 2020.

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reaching the ones originated from different kind of values, such as peace, justice, brotherhood, solidarity, environmental protection”².

If we focus, as Schmit somehow does, on the regulatory and political systems’ vertex, on the relation between decision and regulation, we miss all the rest, and “rest” means the social reality. If we focus, as Schmit does in some ways, just on the regulatory and political systems’ vertex, on the relation between decision and regulation, we risk losing all the rest, and “rest” means the social reality. If we look just at the appearance, we shut our eyes on the substance. And the law abdicates to be a useful resolution tool for social conflicts, as it is for practical problems.

Sars-Cov-2 is actually showing it ruthlessly: the mere analysis of the legal provisions is not so useful to stop the infection, and therefore to save the humankind, without an appropriate consideration of their application³. The jurist, in front of “stream of regulatory sources”⁴ appears confused. And he seems having the only path that leads to the shelter of the traditional paradigms of our juridical system to follow. The scheme is from time to time equal to itself: the regulation urgently decreed is examined and interpreted on the basis of the reference constitution, trying to highlight any possible aporia. Then everything is explained through the state of necessity, including the moment of suspension of the constitutional freedoms. So far the problem seems solved. No matter if

² P. Consorti, *Diritto e religione. Basi e prospettive*, Laterza, Roma-Bari, 2020, p. 17.

³ M. Barberis, who teaches Philosophy of Law in Trieste, has well summarized this issue with a post on Facebook: “Even the juridical realism, the real one (mine), helps in some ways. Everyone hurries to give an interpretation of the decrees in order to understand what can and cannot be done. The juridical realist, instead, go out in the morning, under a fine drizzle, and see how the decrees are put into practice” (12th March 2020).

⁴ “profluvio di fonti normative”, I. Massa Pinto, *La tremendissima lezione del Covid-19 (anche) ai giuristi*, in *Questione giustizia*, 18 marzo 2020.

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everything around us is changing fast. We keep on adapting our life to the rules, but Sars-Cov-2 forces us to adapt the rules to our life instead. In fact, the call by the Government to our responsibilities has becomes more and more persistent.

Here starts, first of all, the need of a “horizontal” reflection on the Law studies about the religious and ethical choices; the values behind these personal choices cause, in each person, “responsible” behaviour, that is those ones aimed at saving the communities and the humankind itself⁵. Human race is being saved, not by the political decisions (much less those ones with one man at the wheel), but the behaviour of the people who are building wide and innovative solidarity networks, locally, digitally and globally. The virus overthrows sovereigntisms and the last nationalistic privilege, legacy of an old legal system, that is the citizenship as well. And the issue of a Earth constitution is becoming urgent, as [La Valle](#)⁶ and [Ferrajoli](#)⁷ remind us, because of the total interdependence of the inhabitants of the planet⁸. How is it possible that all this remains uninvolved in the juridical reflection? Everyone can see the reality: the mercantile vision of the globalized law doesn’t work; the subjective law is not typically “individual”, because it originates in a regulatory relations system that causes the social rights⁹.

⁵ In fact, even a “horizontality of duties” is being discussed. T. Greco, *Il ritorno dei doveri*, in *Cultura e diritti. Per una formazione giuridica*, n. 1/2012, pp. 91 ss.

⁶ R. La Valle, *Imparare da ciò che siamo*, 14 marzo 2020, in <http://ranierolavalle.blogspot.com/2020/03/imparare-da-cio-che-patiamo.html>.

⁷ L. Ferrajoli, *Il virus mette la globalizzazione con i piedi per terra*, in *Il manifesto.it*, 17 marzo 2020.

⁸ Cfr. A. Philippopoulos-Mihalopoulos, *Covid, la malattia etica*, in *Calumet*, 16 marzo 2020.

⁹ I wonder if, once the pandemic is passed, in the Law studies departments, having the Trade Law as a fundamental and the Third Sector Law as an optional, will still make sense. Or maybe the jurist’s education priority have to be revised?

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Our religious and ethical choices have a main role, in our conscience, in these processes; but we have to ask ourselves about the religions, as collective subjects. What about them and what are they going to be? The Sars-Cov-2 not only has overthrown the governments' and citizenship's barriers, but also those of religious affiliation.

The impact of Coronavirus on religions is so strong that even [Wikipedia](https://en.wikipedia.org/wiki/COVID-19_and_religion) has made a page about it, constantly updated, in English. This confirms the “global” reply by the religious organizations. All the regulatory scheme, except for some ritual and confessional characteristics, are very similar, as well in their actualization: similar are, in fact, the sanitary and safety measures during the celebrations, and the number of people during them, the suspension of the collective meetings, the cancellation of big events, and, in most cases, the closure of the places of worship or the denial of access for the worshippers. There are few groups who challenge the laws of nature, not worrying about the infection and perhaps enhancing new outbreaks (such as South Korea and Campania-Italy); they are minority groups, or, sometimes, “extremist” fringes. This is illustrating an acquired fact in the religious studies: through the single religious experiences is generally possible to trace a concept of religion, according with a phenomenological approach (such as the one of Rudolf Otto).

Of course, we have to deal with this kind of perspective taking into consideration that the self-executing “degree” of the religious rules can be different in each context. The Catholic religious authorities suspend the Sunday Mass, just like the Islamic ones suspend the Friday prayers, and so the Protestant with their cult. And Jews synagogues close. Priests and bishops get the infection and, without their knowledge, infect. The virus crosses the Vatican City borders as well. Lourdes baths close and so the Buddhist places of worship and the Holy

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Sepulcher of Jerusalem. The spread of the measures is similar: via websites or official pages on Facebook or Twitter. And this occurs all around the world, no matter what the religion is.

In these situations, the ones who study Law or Religion feel disoriented. Even the already tested relation system between public powers and religion can't help to understand what's happening in this phase: the laical France, with its notorious separatist model, has started a debate with [religions' delegates](#); Italy seems, during this emergency, to have set aside its traditional bilateral concordat with (except for a small [dialogue](#), that causes doubts more than certainty¹⁰, with the Catholic Church, about the Holy Week rituals). It's also necessary think about the Roman Catholic Church model, as we know it, with its hierarchical and universal structure, with the Pope at the top. But the Pope doesn't choose for the whole Church. Francesco acts in his typical way, as the Rome bishop, leaving the responsibility to the other bishops¹¹. This can seem a paradox for the Canon Law scholars, but he's more "*primus inter pares*" than Patriarch Bartholomew, who, quite the opposite, decides to [suspend](#) the celebrations in all the Greek Orthodox Churches. And so The Church of Jesus Christ of Latter-day Saints does: a [measure](#) suspends all the celebrations *worldwide*. Aren't these elements to bear in mind in our analysis from now on?

¹⁰ See the two comments on my blog (www.luigimarianoguzzo.com): *Coronavirus, la Conferenza Episcopale Italiana pubblica gli Orientamenti per la Settimana Santa: i provvedimenti governativi sulla libertà di culto possono essere derogati per "sentito dire"?*, 24th March 2020; *Coronavirus, il Ministero dell'Interno chiarisce: alle messe può partecipare una rappresentanza di fedeli*, 28th March 2020.

¹¹ This is an example of the synodal attitude that belongs to the ecclesiastical update process conducted by Francesco. Cfr, for everyone, A. Mantineo, *Il ritorno al Concilio Vaticano II e l'aggiornamento del diritto ecclesiale nel tempo di Papa Francesco*, in *Stato, Chiese e pluralismo confessionale*, n. 27/2017.

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There is a national law (and supranational) and a religion law of the emergency (www.diresom.net, here a wide collection of measures, regulations and provisions). In the religious rights it's generally possible to find several provisions of exceptions to the rule. But these exceptions themselves are not enough compared to the sanitary emergency. As the liberal constitutions, even the confessional organizations aren't prepared to cope with Sars-Cov-2, that means to adapt it to their regulatory categories. The only exception is made by the Islamic tradition, that has a specific *hadit*, that refers precisely to epidemics: "If an epidemic may appear in a land, don't go there; and if you are in that land, don't escape from it"¹².

All these new emergency rights have a further characteristic in common: all the provisions are made, more or less formally, on the basis of the political measures. That means that the religions' independence and autonomy from the political communities, and on this detachment are based all the conceptualization of the secularity, are actually limited. There are issues, such as the human safety on Earth, on which the religions don't have authority, because they aren't able to solve the mean issues the people have to deal with¹³. So far, nothing new: the modernity probably starts from here. What's new is that this time religions have clearly admitted this principle. The religions at last are willing to render unto God what's God's and to leave to Caesar what's Caesar's. When the [Pointer Institute](http://www.pointerinstitute.org) declares that faith cannot save the humankind, everything is perfectly normal; but, when the religions themselves, declare it explicitly, we are witnessing a deep change, that cannot be simply explained with the matter

¹² The [UCOII](http://www.ucoii.org) mentioned it recently. See also M. Abu Salem, *L'Islam italiano e le regole religiose di fronte all'emergenza del COVID-19: "L'avversità si accompagna alla buona sorte"* (Cor 94, 5-6), in *Oliv*, 13th March 2020.

¹³ Cfr. Y. N. Harari, *21 lezioni per il XXI secolo*, Bompiani, Milano, 2019, p. 177.

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of secularism. Therefore, seemingly there is no difference between the [Imam](#), who asks to the Muslims to follow the Saudi Arabia civil law, and the Episcopal Conference's news agency, that publishes [an article](#) in which we can read: "the power of faith and of clergy is in addition and can't substitute the civil power". Pope Francesco himself, who [declared](#) he prayed God to stop the epidemic by "His hand", on the 22th March [angelus](#) talked about the need of doing "what the Government asks us to do for everyone's sake". Even [Dalai Lama](#) writes that it is necessary to employ "science and human ingenuity with determination and courage to overcome the problems that confront us". The separation between religion and science has therefore been made. After all, the Dominican Tommaso Campanella as well, in his "Defense of Galileo", wrote (1616): "Each cult or human institution that forbids the investigation of natural things must be considered suspect of counterfeiting"¹⁴.

So Coronavirus reconciles everything, even the religions, that in these days provide their services online, via streaming. It seems that no religion is capable to give a specific, personal answer, adequate for contrasting and limiting the infection. A part from the answer of the prayer, a sensible answer. And this is not small thing. But some religions - especially the Abrahamic ones –, starting from this crisis, might get the chance to activate, within themselves, reform processes, that deal with the relations between top and basis, authority and popular participation. In addition, we have to ask ourselves, within the relation between religion and innovation, how much all this affects the symbols and the liturgy: vinyl and nitrile gloves for Catholic priests, the individually packed particle for the Anglicans, the single-use mat for the Muslims.

¹⁴ See T. Campanella, *Apologia per Galileo*, Bompiani, Milano, 2001.

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It has to be clear that this is the only way religions could be act in, that is with responsible actions, that put everybody's life at the centre. But we can't avoid the question: what will be the impact of Sars-Cov-2 on religions in the long-term (as [Gary Bouma](#) already wondered)?

Religions have always offered safety. And today religions entrust this safety to science; the science that has even aimed to take over God. Buddhists, Waldensians, Catholics, Muslims allocate funds to the research, acting not differently from several NGOs: over the centuries public powers have found many ways to finance religions, now religions finance the public health. Everybody thinks that these are common sense choices. Most likely all this will not lead to the eclipse of religions from the public space (especially if the public space expands to digital ...). There is a lot at stake: maybe were we already in front of the first signs of a super-religion, that “ensures the Heaven to the enhanced man, on Earth as in Heaven”¹⁵? And could be this super-religion the achievement of Gioacchino da Fiore's previsions, whose theology of history considers the third age the one of the Spirit, with an Ecumenical, free and tolerant church (and religion)? Does it not go in this direction, the idea of universal human brotherhood, for world peace and common coexistence, of which above all the Catholic Church and Islam have promoted, with the [Abu Dhabi document](#) (2019), now referred to as "global fraternity" in a [document](#) of the Pontifical Academy of Life?

Perhaps we are going a bit further. But these are challenges the juridical studies about religion have to cope with. Because *we're not going back to normal*, after Sars-Cov-2. Included our Law and Religion studies.

¹⁵ M. Ventura, *Dio non basta, è ora di super religione*, in *Corriere della Sera – La Lettura*, 17th January 2016, p. 7.