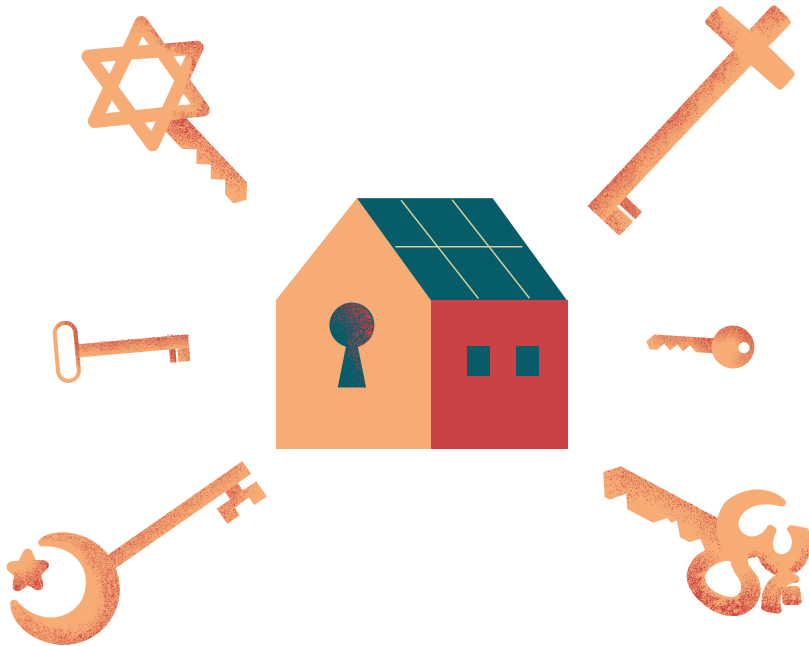


# VARIETIES OF RELIGIOUS SPACE

FREEDOM, WORSHIP AND URBAN JUSTICE



Melisa Liana Vazquez

Studies in Law  
and Social Sciences **10**



Università degli Studi Roma Tre  
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## *Introduction*

The world of sacred spaces is vast, geographically, metaphorically, chorologically.<sup>1</sup> Addressing it in the context of law and spatial justice is daunting to say the least, since some of the greatest philosophers, theologians and legal scholars around the world have filled volumes on the topic. This volume has a modest clearly demarcated scope. I hope to cast a wide interdisciplinary net and pull in insights that can act as points of convergence: a series of small lights that together might shine brighter. Along the way there will be ‘stops’ in spatial theory from philosophers, architects and urban planners, theological insights from within and without religious traditions, and legal explorations with a concentration in Italy. We will visit cathedrals and mountains, mosques and football stadiums, sanctuaries and interfaith spaces, all in an attempt to understand how sacred space is made and unmade, legally controlled and hoped for.

The first chapter offers a somewhat broad sweep which however touches on some of the key issues that emerge when studying sacred spaces in modern urban contexts. In Italy, the massive cultural heritage of its Catholic roots has particular consequences, such as the important number of churches on the territory, many fallen into disrepair and disuse. Canon law and secular law therefore work together to determine how to manage these sacred spaces and the kind of arrangements they come to reveal. A range of silent assumptions invisibly make (and break) urban spaces. The issue of spatial justice at the heart of this book immediately arises and thus begins a thread that will continue throughout on the relationship between freedom and rights.

The second chapter offers an extensive legal and theoretical analysis of a case that took place in Pisa in 2019 regarding permission for the building of a mosque. There has been a tremendous amount of scholarship on this case and on the issues it brings to the fore which I have tried to carefully and comprehensively address. The case provides a kind of springboard for the issue of how ‘space’ and ‘place’ are distinguished by Courts, scholars and everyday people. These and the related arguments they prompt have found lively debate in the field of legal geography among others. My contention that space is never “empty” but is instead *always already semanticized* is

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<sup>1</sup> Chorology is a complex topic which however is extremely useful to a discussion of space and religion. See Chapter 3 for a definition and further explanation.



something of a motif that runs throughout the book and is argued in a technical-legal vein in this chapter. Here again the issue of legal rights vs. freedoms is addressed, with specific regard to constitutional legitimacy.

The third and final chapter offers some historical-conceptual views of religious and secular space struggles. First, there is a foray into the changing relationships between state authorities and religious authorities during the medieval period in Europe that is offered as a way of encouraging a reflection that is not hampered by modern assumptions about what secularism is and does, what territory is and does. The chapter then surveys some of the more prevalent Euro-American efforts at ‘multifaith spaces’ and analyzes how these attempt to meet (or fail to) modern religious needs. This is followed by another historical excursion to 17<sup>th</sup> century Germany and the creation of the *simultaneum mixtum*, a church intended for mixed denominational use. Research on how this occurrence was neither singular nor short-lived, and that it involved an intertwining of different faiths that is almost difficult to imagine today reveals the power and possibilities of liturgy, understood through its etymological root of “acting in public space”, another theme that is central to the arguments of the book.

Finally, the notion of a constitutional spatial justice is outlined as one proposal for how we might fruitfully address, at least in theoretical terms, the various struggles for space described throughout the work. Key to this proposal are two ideas. First, in the realm of constitutionalism, is the idea of horizontal subsidiarity, or the need to make possible action taken from below. From this perspective, freedom must be defined and shaped first by people and only secondly through rights and laws. Fluidity and room for change is fundamental, thus the constitutional focus since it is precisely constitutions that are designed to remain open to new inscriptions of peoples’ claims within their semantic domes. The second idea in support of a spatial constitutionalism is that of a “chorological approach”. This is a semiotically oriented view of categorical frameworks that seeks continuity along different categorical spectra recognizing in the movement of categorical features the shimmering possibilities of changing socio-spatial boundaries.

Ultimately, I would like to argue that if renewal is taken on as a serious commitment, if the Vatican and the European Commission and all of the many many actors involved in decision making about sacred spaces and urban management can be held to the promise of “leaving no one behind,” then aspirations for a peaceable pursuit of freedom, worship and urban justice might possibly be within our sights.

# Chapter I

## *Troubling Sacred Spaces*

SUMMARY: 1. What's the trouble? – 2. Cathedrals and the non-neutrality of deconsecration – 3. Houses of worship in the urban 'commons' – 4 Religious heritage vs. hierophany: the sacred in motion – 5. The historical bent of the secular/sacred divide. The need for a more 'global' view – 5.1. Globalization as being – 5.2. The long history of interreligious and intercultural practices – 5.3. A World of Many Worlds.

### 1. *What's the trouble?*

Sacred spaces are troubling because of their inability to keep still. In their conceptualization as 'sacred' as well as their conceptualization as 'spaces' they resist the boundary conditions that typically adhere. Every idea about how to manage a church, a mosque, a temple, or a tract of sacred ground, is deeply imbricated with culturally lodged ideas about what those 'things' are and mean. Each is intertwined with social, political, and legal norms, and those norms are the result of historical processes. Indeed, it is impossible—as has been repeatedly observed<sup>2</sup>— to speak of the religious or the sacred without reference to its dialectical twin: the secular. The definition of 'sacred' within secular spaces is necessarily shaped by the religious context that defined it in the first place. While they may share qualities, manifestations of secularization are unique to their specific historical contexts. So, for example, when a majority Christian culture attempts to regulate the presence (or absence) of non-Christian 'houses of worship' on its territory, the terms of engagement have already been defined. There is no longer any room for the worldview that brings

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<sup>2</sup> One of the most important modern texts to clearly articulate the complexities of secularization and its relationship to religions is J. CASANOVA, *Public Religions in the Modern World*, Chicago University Press, Chicago, 1994, but this same author has revised and refined his theories regarding secularization in several subsequent works. See, indicatively, "Public religions revisited" in H. de VRIES (ed) *Religion: beyond the concept*, New York University Press, Fordham, pp. 101-119. In a copious literature, an illuminating overview of secularization theory after "disenchantment" can be found in C. CALHOUN, M. JUERGENSMEYER, and J. VANANTWERPEN, *Rethinking secularism*, Oxford University Press, Oxford, 2011.

to life a mosque or any other non-Christian religious manifestation into its geography. There is only the possibility of squeezing material parts of the ‘Other’ worldview into its preset categorical schemes. However, the seemingly obvious materiality of ‘houses of worship’ is not, in fact, obviously material. That is, what makes a mosque, or cathedral, or temple, or field sacred is the result of subjective historical processes of space-making that were subsequently cast into the stone of a cultural-societal logic, too often losing the perceptible connection with the subjective creation processes that went into them. These places/spaces become ‘things’ in the world, masking the fluid processes that made and continue to make them, especially from the perspective of signification.<sup>3</sup>

Consider the cathedral. The etymology of the word ‘cathedral’ traced from both Latin and Greek describes the ‘seat’ (*cathedra*) of the head of the diocese, the bishop, traditionally an elevated throne, around which the space unfolds. Cathedrals date back to the 4th century when they were first constructed to ‘house’ the election and inauguration of the bishop, and their architecture typically reflects the ritual purposes for which they were created: a large internal space to accommodate groups, a long central aisle for processions, usually an overall cruciform layout reflecting the body of Christ on the cross, the most important symbol of Christianity, and of course a monumental architectural ethos designed to express maximal reverence for God. Soaring ceilings create reverberation for recitation, incantation and holy music, windows placed high above let in celestial light, walls and ceilings with elaborate works of art illustrate images, stories and ideas from the bible. The cathedral is not simply a building where people convene for religious worship, but a Christian structure that evolved over centuries as part of Christian praxis. Every aspect of the ‘building’ emerges from and is sustained by specific liturgical needs.<sup>4</sup> From the apse that holds the choir to the crypt below that holds

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<sup>3</sup> See M. RICCA, *The Intercultural Spaces of Law. Translating Invisibilities*, Springer, Cham, 2022, esp. pp. 385–418.

<sup>4</sup> The interdependence of praxis and architecture in the design of cathedrals is profound, “...almost every detail of the Gothic cathedral— the cruciform plan, the use of light, the statuary, the representation of the Trinity in trifolds and of the four evangelists in quatrafoils, and so on – reveals design decisions that are explicitly theological”, M.A. RAE, *Architecture and Christian Theology*, in *St Andrews Encyclopaedia of Theology*. B.N. WOLFE et al eds., 2023, p. 1. In fact, Gothic cathedrals were built according to the mathematical proportions described by Diogenus Aeropagitis in his “Celestial Hierarchy.” These proportions were, in turn, isomorphic to the musical intervals between the notes in Gregorian chants. These intervals recalled the conceptual/theological/spatial dimensions of St. Augustine’s City of God, the early Christian book of comparative theology. Thus, from the space of construc-

the deceased, each part has an important function specific to Christian rites and practices. Without the eucharist, there would be no altar.<sup>5</sup> Moreover, there is a transitive quality at work here: praxis is imbued with significance and this significance determines the forms of religious structures. The altar is the expression or result of the Bible's last supper, that is, without the last supper, it would have no meaning. Mosques and temples do not feature altars but rather those forms and structures that support and imbue the practices they enact. Should there be any doubt about the importance of aspects such as the altar, one need only note that the Catholic church considers that it cannot lose its sacrality, even when the surrounding church structure has been deconsecrated.<sup>6</sup>

Furthermore, the presence of the cathedral is not limited to its architecture (which might also spread into a baptistry, a chapel, a basilica, a graveyard, or a sanctuary) but instead also includes its sensory emanations: the bells that toll at regular intervals, sending specific messages to the community, the processions that move in and out of the space for the purpose of individual and community rites (weddings, funerals but also religious rites, e.g. Stations of the Cross or Palm Sunday), the smell of incense, the sound of choirs, and so on.<sup>7</sup> The cathedral is far

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tion to the space in music to the space in the concept of the city of God we find a deliberate harmony and a recognition of the fundamentally metaphorical 'nature' of space. But even at a simpler level, the cathedral embodies the Catholic faith. The Canon of Florence's Cathedral Church (Santa Maria del Fiore) and sacred art scholar Timothy Verdon captures this with great eloquence. He points out that the massive size of cathedrals was always intended to "try to configure a human space that is worthy of our concept of God—a space which, in the simplest terms, is going to be very big. Because God is infinitely above us; God occupies the entire universe." And further, "you can't really just talk about the visual art of the Church, or the music of the Church, or the liturgy. All of this is part of a single creative impulse that flows from the experience of Christ himself, the Word who becomes flesh. A conceptual expression of God who becomes visible and tangible. The First Letter of St. John says that this is what we have seen and touched and contemplated with our own eyes; it's a total sensory and intellectual experience. The liturgy is that. So an artist working for the church and for its liturgy is within this millennial creative action which, in the last analysis, is a continuation in time and space of the Creation described in Genesis." Interview w/ Msgr. Timothy Verdon, Canon of Florence Cathedral, *Church Life Journal*, November 10, 2016.

<sup>5</sup> "The church building itself really has one function, to house the celebration of the Eucharist. The works of art that allow us to imagine ourselves present really become the backdrop for efficacious signs and sacraments in which Christ really is present, and when Christ is present then God is present." *Ibid.*

<sup>6</sup> "Decommissioning and ecclesial reuse of churches Guidelines" Pontificium Consilium de Cultura, Vatican, December 17, 2018, p. 277.

<sup>7</sup> For a compelling description of these kinds of emanations and their consequences in the

from being a mere ‘thing’ placed ‘out there’ whose signification begins and ends with its material features. In its complexity and historical precision, it cannot be conflated with other spatial manifestations of religion. Yet, this is precisely what can occur when the secular structures that host it attempt to regulate other religious requests for occupying space. In a Western secular state like Italy, the cathedral potentially becomes the mold for the ‘house of worship’ which is then objectified and projected upon the mental schemes of people as the one and only way of understanding shared public sacred space. What makes this phenomenon more powerful still is its entanglement with law, inevitable insofar as law is tasked with the regulation of public space as well as the protection of freedom of religion and thus the praxis—including spacemaking—it entails.

Since the historical fabric of secularization is always shared by both the secular and religious ‘threads’ that went into its fabrication, the cooperative weaving together of these areas can be smooth. After all, the ‘thingifying’ of cathedrals is certainly related to their ubiquity and longstanding presence in the societal context. There are approximately 100,000 cathedrals in Italy of which 80% are legally classified as cultural heritage sites (*beni culturali*). When added to other religious buildings, these cathedrals represent 70% of the “artistic historical patrimony” of Italy.<sup>8</sup> It is not surprising that the legal regulation of Christian houses of worship is relatively unproblematic. The grammar of subjectivity developed over centuries of iterations is such that even the crucifix on the walls of a public school is agreed to be not a religious but rather a cultural symbol.<sup>9</sup> This ‘agreement’, however, is nuanced and bilateral across the sacred/secular divide in the sense that sometimes religious views melt into the cultural context as in the latter case, and at other times they protrude, and become subject to special forms of protection.<sup>10</sup>

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medieval European context see A. SPICER, S. HAMILTON (eds), *Defining the Holy. Sacred Space in Medieval and Early Modern Europe*, Routledge, London, 2005, pp. 7-9.

<sup>8</sup> D. DIMODUGNO, *Gli edifici di culto come beni culturali in Italia. Nuovi scenari per la gestione e il riuso delle chiese cattoliche tra diritto canonico e diritto statale*, Università degli Studi di Torino, Torino, 2023, pp. 15-16.

<sup>9</sup> See the iconic European Court of Human Rights case, *Lautsi v. Italy*, judgment available at <<https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-95589%22%5D%7D>>.

<sup>10</sup> Perhaps among the more evident instances of this kind of exceptionalism for the Catholic church in Italy is its special protection in Art. 7 of the Italian Constitution which specifically declares the State and the Catholic Church “each within its own sphere, independent and sovereign.” For an extended in-depth analysis of the Constitutional treatment of religions in Italy see M. RICCA, *Pantheon, Agenda della laicità interculturale*, Torri del Vento Edizioni di Terra di Vento, Palermo, 2012, and especially pp. 112-118 for an analysis of

What becomes immediately apparent are the ways in which the ‘naturalization’ of the historically Catholic worldview seeps into domains where it technically does not belong. Italy, after all, is a secular state. Since the dawn of its secular life, it has been tasked with limiting its control to the so-called external forum, the world of actions rather than that of thoughts. The internal forum cannot be trespassed by the state, and religion is the ultimate expression of internal forum insofar as belief is individual and private. The state is empowered to protect freedom of religion generally but should not get overly involved in determining what or how religious life is expressed. From this perspective, it should remain neutral towards any religious credos, neither denying or sustaining them. This apparently reasonable attitude, however, is not always straightforward in practice. One fitting example of a non-neutral neutrality is the deconsecration of previously sacred spaces in Italy.

## 2. *Cathedrals and the non-neutrality of deconsecration*

Italian Civil Code Art. 831 regulates “assets of ecclesiastical institutions and buildings of worship.” On the matter of repurposing sacred spaces for profane uses, we find the following point:

*(2) Catholic churches, though owned by ecclesiastical bodies, are subject to private rules, that is, they can either be sold or expropriated. If they are not deconsecrated, however, they cannot be taken away from their proper purpose as buildings of worship. This requires a specific act by the ecclesiastical authority, in accordance with canon law.<sup>11</sup>*

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Art. 7 cost. In a deep literature, recent contributions include E. VITALI, A.G. CHIZZONITI, *Diritto ecclesiastico. Manuale breve*, XIV ed., Giuffrè Francis Lefebvre, Milano, 2019; I. ZUANAZZI, *Le fonti del diritto in materia di convivenza delle religioni*, in I. ZUANAZZI, M.C. RUSCAZIO, M. CIRAVEGNA, *La convivenza delle religioni negli ordinamenti giuridici dei Paesi europei*, Giappichelli, Torino, 2016, pp. 123-124. For an overview of the legal governance of houses of worship and church heritage more generally in Italy see A. FUCCILLO (ed), *Diritto, religioni, culture. Il fattore religioso nell’esperienza giuridica*, Giappichelli, Torino, 2022, pp. 185-244.

<sup>11</sup> All translations from Italian unless otherwise cited are mine. Original text:

“Le chiese cattoliche, pur di proprietà di enti ecclesiastici, sottostanno alle regole privatistiche, possono, cioè, essere sia vendute che usucapite. Se non sconsacrate non possono, peraltro, essere sottratte alla loro propria finalità di edifici di culto. A tale scopo è necessario uno specifico atto da parte dell’autorità ecclesiastica, in conformità al diritto canonico.”

This point offers a clear view of the taken-for-grantedness of the agreement on categories of understanding between majority religion and state entities. If the secular state were truly neutral on the topic of the sacred, there would be no need to consider the matter of deconsecration. From an atheist point of view, for example, there is no such thing as a distinction between sacred and no-longer-sacred buildings. Nor can a building have a “proper purpose” with any kind of lasting power; the purpose of a building can be changed from one minute to the next based on practice, and the new practice becomes instantly ‘proper’ for the space. This occurs constantly in modern societies where commercial spaces change purposes (shop, restaurant, hair salon, professional office) or even become private homes with little if any question of propriety. Instead, that a building of worship cannot stop *being so* without an ecclesiastical act reveals a state that not only respects ecclesiastical institutions, but also *believes* in consecration as a valid act that must be legally protected. The state here is recognizing a ‘specialness’ in the sacred building that cannot be removed without a special act. Again, to an atheist, this might seem closer to believing in magic than in rights protection.

At the same time, there is a parallel made in the Civil Code between buildings of worship and other state-owned entities. The idea of ‘proper use’ is applied to both. State-owned facilities also cannot be removed from their intended or proper purposes, and this is related to Art. 42 Cost., which empowers the state to recognize and guarantee by law the modes of acquisition, enjoyment, and limits of such properties, with the aim of ensuring their social function and accessibility to all.<sup>12</sup> Here again we can see a harmony of categorical schemes; whether the governing authority is divine or secular, there are similar rules and similar objectives: social function and accessibility. That religious buildings may not be patently accessible to non-Catholics is not a real consideration here because the historical overlap between state, people, and buildings of worship did not require it.

This is not to say that deconsecration is always a smooth process, and the increase in numbers of Christian houses of worship falling into misuse has certainly not gone unnoticed by religious authorities.<sup>13</sup> In 2018, an

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<sup>12</sup> A. BETTETINI, A. PEREGO, *Diritto Ecclesiastico*, Wolters Kluwer, CEDAM, Milano, 2023, p. 198.

<sup>13</sup> The academic community has also been quite attentive to this phenomenon. Notable are two Italian seminars and their resulting publications which brought scholars and religious leaders together to explore both the specific qualities of the situation at hand as well as possible solutions, see L. BARTOLOMEI (ed), Conference proceedings, “The Future of Churches”, Bologna, 5-7 October 2016, “Il Futuro degli Edifici di Culto: Temi”, special

international conference involving delegates representing twenty-three national episcopal conferences was held to establish guidelines for ecclesial communities for the decommissioning and reuse of houses of worship.<sup>14</sup> The concern was not only theological; since the number of churches considered to be cultural heritage worthy of protection is so significant, the guidelines attempt to encourage preservation of these structures, even if it involves decommissioning. The guidelines<sup>15</sup> that emerged from the conference offer further insight into how culturally determined categorical schemes strictly determine what religious buildings *are* and how they should be treated even when they lose their religious purpose.

The guidelines state that “a church is essentially a building used for Catholic divine worship (cf. canon 1214). Once such use ceases legitimately, it is no longer a church.”<sup>16</sup> Nevertheless, the guidelines point out that juridical concerns arise when certain problematic behaviors are enacted regarding the decommissioning of churches. These include “reducing a church to profane use without any of the necessary grave causes”, “planning for an improper use (“sordid” cf. canon 1222) of a church after its reduction to profane status”, “causing the cessation of divine worship by the actual closure of the church with the intention of reducing it to profane use”, “ceasing Catholic worship through transfer of the sacred building to a non-Catholic or non-Christian community, with the risk of a successive reduction to profane use” and “habitually using the church for an activity other than divine worship (concert hall, conference centers, etc.), with sporadic celebrations of religious functions.” The spirit of the conference and the resulting guidelines are not against decommissioning, quite the opposite. The document produced “recognizes the final authority of the Ordinary for cultural heritage” and states as goals: social inclusion, the safeguarding of creation,

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issue of the online journal *IN\_BO. Ricerche e progetti per il territorio, la città e l'architettura* v. 7, n. 10, 2016, and L. BARTOLOMEI, S. NANNINI (eds), Proceedings of the Summer School “Nuovi scenari per patrimoni monastici dismessi” Lucca: 25 July-3 August 2019, “La Casa Comune. Nuovi scenari per patrimoni monastici dismessi,” special issue of the online journal *IN\_BO. Ricerche e progetti per il territorio, la città e l'architettura*, v. 12, no. 6, 2021.

<sup>14</sup> “Doesn't God Dwell Here Anymore? Decommissioning Places of Worship and Integrated Management of Ecclesiastical Cultural Heritage” held in Rome, Italy, at the Pontifical Gregorian University on November 29 and 30, 2018.

<sup>15</sup> The document issued by the Vatican, “Decommissioning and ecclesial reuse of churches Guidelines”, is available at <<http://www.cultura.va/content/dam/cultura/docs/pdf/beniculturali/guidelines.pdf>>.

<sup>16</sup> *Ibid.*, p. 277.



and “the ‘humanization’ of both city and land”<sup>17</sup>. Still, there is a stickiness to be found in the behaviors around decommissioning that are identified as problematic.

First, “reducing a church to profane use” implies that it is diminished through this act, that it becomes less, and the fact that such an act requires “grave causes” establishes a clear hierarchy wherein profane use is inferior. There must be danger of some sort in play if a church is to lose its sacrality. Running through the other cited problem behaviors is the undesirability of profane use, even when such use is concomitant to spiritual use; the balance must be in favor of spiritual use. Another identified risk is the transfer of a sacred building to a non-Catholic or non-Christian community. The lumping together of these again establishes a hierarchy: any organization that is not Catholic is inferior and puts the sacred building at risk of profane use. This, however, is somewhat illogical since transferring ownership of a Catholic building to, for example, an Orthodox Christian community is surely not to be equated with transfer to, say, a Christian sports organization. The risk of successive reduction to profane use cannot be the same. The last risk presented is particularly interesting because it seems to create important limits for even Catholic use of sacred buildings. It is stated that uses other than divine worship cannot exceed those of religious functions. In short, a parish cannot organize more concerts and conferences, *even if these are Catholic in substance*, than the number of masses performed. The throughline is clear: Catholic churches are intended for Catholic *worship* and this priority should be protected to the maximum extent possible.<sup>18</sup> There is nothing surprising or perhaps

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<sup>17</sup> *Ibid.*, p. 276.

<sup>18</sup> The Italian national church guidelines are even more restrictive, holding that “The dedication of a church to public worship is a permanent fact, not susceptible to division in space or time such as to allow activities other than worship”. Original: “La dedizione di una chiesa al culto pubblico è un fatto permanente non suscettibile di frazionamento nello spazio o nel tempo, tale da consentire attività diverse dal culto stesso. Ciò equivarrebbe infatti a violare il vincolo di destinazione, tutelato anche dall’art. 831 del codice civile. La chiesa deve essere nell’esclusiva disponibilità della persona giuridica competente per l’officiatura e pertanto non può essere oggetto di un contratto che attribuisca a terzi diritti, facoltà, poteri, possesso o compossesso sull’edificio di culto ; non può essere bene strumentale di attività commerciale né può essere utilizzata in alcun modo a fine di lucro. La responsabilità pastorale della chiesa compete al rettore ; quella amministrativa spetta al rettore, se la chiesa ha personalità giuridica, altrimenti, all’ente ecclesiastico cui la chiesa è annessa”, Conferenza Episcopale Italiana, *Istruzione in materia amministrativa*, September 1, 2005, *Notiziario C.E.I.*, 31, 2005, n. 128, pp. 396-397.

even objectionable in this position, coming as it does from the Vatican.<sup>19</sup> However, if social inclusion and “humanization” are the overall stated goals in the management of decommissioning, then the implications of preferred use will be in contrast. If a non-Catholic denomination requests usage of a decommissioned church, there should be no assumption made that a future profane use is a risk. If organizing sacred concerts in a church is a way of retaining active membership in a society that continues to see a steady decline in church attendance, does opposing it reflect the goal of “safeguarding creation”? If a church is no longer a church, just how far should restrictions for re-use extend?

“Sordid”, “profane” and “improper” are used somewhat interchangeably in this document dripping values onto all the recommendations involving uses identified in these ways. The guidelines also state that there is a need to avoid “situations that can give offence to the religious sentiment of a Christian people”, a request that is entirely dependent on a previous knowledge of what this deeply cultural boundary might entail. Finally, the guidelines invite all constituents (churches, governments, local authorities) to ensure that redeployed sacred spaces engage a use that is “compatible with its original meaning” while at the same time encouraging “a more imaginative use of existing religious buildings.” This perfectly encapsulates the contrast that occurs when religious entities, cultural heritage mindsets, and plural urban spaces collide. As previously outlined, the meaning of a sacred is tied to its structure and uses. Any new use is unlikely to be “compatible” with old uses since it will necessarily bring its own meanings. Nor are attempts to preserve previous uses consistent with human ways of space-making which are always generative. The call for “imaginative use” makes little sense since

<sup>19</sup> The Supreme Tribunal of the Apostolic Signatura has frequently ruled against requests for suppression and reduction to profane use of sacred buildings, making distinctions in the acceptable motivations for each. For example, “The scarcity of priests can be a cause to suppress a church but not to reduce a church to profane use” (Sentence of this Supreme Tribunal of May 21, 2011, Leeds, prot. n. 42278/09 CA). The position that repeatedly emerges is that “it is necessary to prove in individual cases that there truly exist grave causes,” (Sentence of this Supreme Tribunal of May 21, 2011, Syracuse, prot. n. 41719/08 CA). See also F. DANEELS, *Soppressione, Unione di Parrocchie e Riduzione ad uso Profano della Chiesa Parrocchiale* in *Ius Ecclesiae*, 10 (1998), pp. 111-148, G. P. MONTINI, *La cessazione degli edifici di culto* in *Quaderni di Diritto Ecclesiale*, 13, 2000, pp. 290-291, G. PARISE, *La giurisprudenza del Supremo Tribunale della Segnatura Apostolica in materia di soppressione, unione e modifica di parrocchie e di riduzione ad uso profano non indecoroso di edifici sacri*, EdUsC, Rome, 2015. For a description of the legal canonical perimeters of reduction of a church to profane use see F. GRAZIAN, *Riduzione di una chiesa ad uso profano: atti canonici e civilistici*, in *Quaderni di Diritto Ecclesiale*, 29, 2016, pp. 18-36.

such imagination must here be constrained to Catholic ideas of propriety and practice. That deconsecration is not in any way a neutral enterprise should at this point be clear. And yet the desire to see sacred spaces as commutable for the purpose of the “humanization” of both city and land persists.

### 3. *Houses of worship in the urban ‘commons’*

Indeed, in the area of re-purposing churches that are no longer in use, it has recently been argued that in Italy, borrowing from the English idea of ‘the commons’<sup>20</sup>, houses of worship can be fruitfully classified as ‘common goods.’<sup>21</sup> The Catholic church’s recognition of the principle of subsidiarity and the presence of references to ‘commons’ across Italian case law would seem to support this idea, and several case studies in the Italian context show how collaboration pacts and various creative legal agreements involving private and public entities have successfully enabled the transformation of religious spaces that have fallen into disuse, in this case in Piedmont. The author of this study surmises:

In conclusion, all these examples demonstrate that the concrete application of legal and management solutions deriving from the theory of commons is feasible for the reuse of the ecclesiastical heritage, as long as these buildings are effectively considered part of the “common heritage” by the local population and stakeholders.<sup>22</sup>

While I presume that the solutions found for these spaces were undoubtedly of great benefit to the local communities, there is a silent but crucial glue that is holding them together: cultural unity. In every case, Catholic structures are being re-considered by stakeholders in communities that are historically Catholic. Their shared grammar of

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<sup>20</sup> For a recent interdisciplinary approach to the idea of the commons and the need for its renewal see A. AMIN and P. HOWELL (eds) *Releasing the Commons: Rethinking the futures of the commons*, Routledge, London, 2016. A social science perspective is offered by S. KIRWAN, S., DAWNEY, L., BRIGSTOCKE, J. (eds), *Space, Power and the Commons. The struggle for alternative futures*, Routledge, London, 2016.

<sup>21</sup> D. DIMODUGNO, *Ecclesiastical properties as common goods. A challenge for the cultural, social and economic development of local communities*, in *Stato, Chiesa e pluralismo confessionale*, 12, 2022.

<sup>22</sup> *Ibid.*, p. 28.

subjectivity allows them to collaborate through a common semantic code that goes beyond a language in common to include history, values, in short, ways of understanding the world. The somewhat opaque term 'common heritage' holds meanings that community members most likely share. Their ideas about what is 'proper use' for these church spaces are probably quite compatible. The hidden affinities that lie beneath the stability of the secular-religious arrangement in these communities are fundamental to their success. I use the word 'hidden' not to imply any kind of subterfuge but rather to indicate that they are *unknown even to the knowers*. That there may be other ways of understanding religious spaces and their uses, other ways of evaluating what is appropriate in the relationship between a house of worship and its surroundings, would seem to be irrelevant when there is a commonality of world view. As long as all the people involved agree about how to define 'common' and how to define 'heritage' then buildings allocated to the category can be easily managed. This becomes something of a tautology which however fails to hold, the moment people of differing cultural religious backgrounds enter the scene. The term 'heritage' looks backward to history and calls for preservation. And yet, communities are in constant flux and differences can erupt even within more 'nationally homogenous' communities thanks to migrations from, for example, south to north. Preservation is in some sense incompatible with the very marrow of culture, which is always in motion, always innovating.

The harmonious co-existence of the sacred and the secular in a community that shares historically Catholic ways of understanding space succeeds through a kind of positive contamination, a conceptual seeping between religious and secular realms. In canon law, a distinction is made between 'sacred place' and 'place of worship' with the latter having a broader use that leaves 'sacred' as applicable only to places meeting specific criteria. When using the term 'sacred' canon law intends to ascribe a primarily legal, rather than theological or liturgical, connotation<sup>23</sup> and just so, Canon 1205 stipulates that a place can be considered sacred only if: 1) its designation as a place for worship or burial of the faithful has been made by the competent authority; and 2) it has been dedicated or blessed, as prescribed by the liturgical books. These 'legalizations'—subsequently sustained by secular law—float above a sea of meanings that include recognizing individuals as having divine authority that can then be vested onto places, determining the burial of bodies as a sacred ritual that can

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<sup>23</sup> D. DIMODUGNO, *Gli edifici di culto come beni culturali in Italia*, cit. p. 27.

only take place within sacred spaces, abiding by indications interpreted from ancient sacred texts regarding how sacrality is to be vested upon buildings or other spaces, etc. Each of these stipulations indicates ways of being in the world that are driven by specific historically shaped values. In short: they are not neutral, and neither is a secular law that matter-of-factly supports them.

To be clear: this is in no way intended to be a criticism of the accord between a historically Catholic culture and the modern secular state which hosts it.<sup>24</sup> Such harmony was very much intended within the secularization processes undertaken by Grotius through his theory of natural law and the peace processes of 17th century Europe it helped fuel, putting an end to a particularly barbarous period of history where religious clashes led to massive bloodshed. A shared worldview is deeply productive for any given society. The trouble begins with the advent of pluralism in which people with differing worldviews find themselves unable to squeeze into the categorical molds that were made in their absence and are now treated as universal.

The question of heritage and cultural goods (*beni culturali*) takes on particular importance in a context such as Italy's, whose long and rich history has led to the creation of some of the world's most valued 'heritage', putting it at the center of such debates. Indeed, the Constitution specifically protects this heritage: (Art. 9 Cost. com 2, "It shall safeguard the natural beauties and the historical and artistic heritage of the Nation") and is supported by targeted legal regulation in the form of legislative decree n. 42, 2004. This legislation states, "The protection and enhancement of cultural heritage contribute to preserving *the memory of the national community and its territory* and promoting the development of culture."<sup>25</sup> Again, however, we can see the potential for conflict in the categorical structures lurking behind the legal language. The memory of the national community looks backward to a historical community, one united to its territory. In today's plural societies, however, the national community, that is, the current

<sup>24</sup> For a legal analysis of the relationship between church and state in Italy regarding the role of church assets as part of cultural heritage, see C. AZZIMONTI, *I beni culturali ecclesiali nell'ordinamento canonico e in quello concordatario italiano*, EDB, Bologna, 2002.

<sup>25</sup> Translation mine. Original: "La tutela e la valorizzazione del patrimonio culturale concorrono a preservare la memoria della comunità nazionale e del suo territorio e a promuovere lo sviluppo della cultura" D.L.vo 22 January 2004, n. 42. *Codice dei beni culturali e del paesaggio, ai sensi dell'articolo 10 della legge 6 luglio 2002, n. 137, c.d. Codice Urbani*. See also L. ZANETTI, *Articolo 112. Valorizzazione dei beni culturali di appartenenza pubblica*, in M. CAMMELLI (ed), *Il codice dei beni culturali e del paesaggio. Commento al Decreto legislativo 22 gennaio 2004, n. 42*, il Mulino, Bologna, 2007, pp. 435-447.

citizens that legally make up the nation, have diverse provenances and memories. The development of culture—in theory at least—looks forward not backward. The two statements, in a sense, compete. Whose memory is cultural heritage protection preserving? How far back in history should we go? The dawn of the nation state? Italy was famously reluctant to unify what was previously a remarkably diverse set of states with dozens of unique peoples. Much of the most precious Italian cultural heritage came from these peoples (Sabines, Etruscans, Greeks, Romans, etc.). Is the memory that should be preserved through the concept of heritage that which existed at the moment of unification? A frozen snap-shot of the cultural ‘goods’ that had accumulated up until that moment?

In 2014, the well-known French magazine *Figaro* published a series of dialogues between the French novelist Michel Houellebecq (*cause célèbre* or *enfant terrible* depending on your perspective) and the philosopher Alain Finkielkraut in which they discussed sacred spaces in France, and specifically their relationship to Islam. One excerpt is worth reviewing in its entirety:

M.H.: The spirit of conquest today is on the side of Islam. But in my opinion, Boubaker (rector of the Grand Mosque in Paris and head of the French Council of Muslims, ed.) made a mistake by suggesting that deconsecrated Christian churches be given to Islam. As much as I may no longer be Christian, so much so that I cannot even imagine becoming Christian again, people would be upset. Returning to being a Christian would be like returning home after a long and painful wandering.

A.F.: I also think, dear Michel Houellebecq, that statistics and sociology cannot reign alone. If you talk about identity you are sensitive to history, you are heirs to something. Muslims are therefore asked, as is everyone, to share this inheritance with us. And instead the most moderate among them proposes to turn empty churches into packed mosques. He makes it a simple matter of arithmetic. But it is about something else entirely, as Denis Tillinac wrote in his manifesto, which I signed. You are asked that churches, however deserted, remain so.”<sup>26</sup>

This is a perfect encapsulation of the rigid limits of the grammar of subjectivity and their subsequent extension onto physical space. The request for using abandoned churches for Muslim worship is here placed

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<sup>26</sup> Cited in P. CAVANA, *Unused Churches. A Resource for the Future* in L. BARTOLOMEI, *The Future of Churches*, cit., p. 55, translation mine.

into the category “statistics and sociology.” What Finkelkraut is ostensibly asking Muslims to share is an inheritance defined as the Catholic domination of space. To say that “everyone is being asked to share” is nothing less than dissimulation since the impact of sharing the results of conquest are dramatically different for the conqueror and the conquered. This is not to simplify the historical conditions of France, quite the contrary. In 1962 at the end of the war of independence that put an end to more than 100 years of French colonialism in Algeria, nearly 1 million people migrated to France. This is among the more prevalent historical reasons for the presence of Muslims in France, which nevertheless remains at less than 10% of the total population despite repeated use of terms like ‘invasion’ from the more aggressive voices of the political right.<sup>27</sup> It is certainly not a question of arithmetic for anyone involved. The question is what is to be gained, precisely, by leaving churches empty and asking Muslims to build mosques ‘elsewhere’.

Today, these issues are particularly present in urban contexts not least because city limits place boundaries on how much space is available for all. The greater concentration of plural populations residing in cities is a factor, but I believe post-modern views of cities as places where rights are—or should be—more evenly distributed play an important part. Lefebvre’s famous 1968 call for “the right to the city”<sup>28</sup> was and continues to be extremely influential to modern expectations regarding urban justice. The philosophical underpinnings of this call are also inspirational for the current text, in its resistance to objectified notions of space. Lefebvre was visionary in his understanding of the city not as an object of study, design or planning but rather as an interactive interface

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<sup>27</sup> Right-wing French politician Éric Zemmour, who obtained more than 7% of the vote in his bid for presidential candidacy in 2022, lost his final appeal at the ECtHR that same year against his conviction for inciting discrimination and religious hatred in his comments targeting the French Muslim community. He claimed France was witnessing “an invasion” with “countless neighborhoods ... where many young women are veiled,” and said that French Muslims should “be given a choice between Islam and France.” <<https://www.politico.eu/article/eric-zemmour-france-human-rights-top-eu-court-upholds-conviction-discrimination-muslims/>>. That his parents were Berber Jews from Algeria whose French citizenship would have been denied had they migrated to France just 10 years later, after the war, is among the ironies that often characterize extreme nationalistic discourse.

<sup>28</sup> H. LEFEBVRE, *The Right to the City in Writings on Cities*, Trans. E. KAUFMAN, E. LEVAS, Blackwell Publishers, Oxford, Malden, 2000, pp. 147-160. British Marxist geographer David Harvey is considered to be one of the “modern experts” on the right to the city. See indicatively, D. HARVEY, *Rebel Cities: From the Right to the City to the Urban Revolution*, Verso Books, London, 2013.

in constant rapport with human development. He called it a 'virtual object', the result of the conclusion that "the past, the present and the possible cannot be separated."<sup>29</sup> In short, the right to participate in the constant creation of urban space emerges from the view that urban space is in constant creation, not static or monumental. Furthermore, it has an unabashedly utopian ethos which asks, "What are and what would be the most successful places? How can they be discovered? According to which criteria? What are the times and rhythms of daily life which are inscribed and prescribed in these 'successful' spaces favorable to happiness?"<sup>30</sup> These kinds of questions seem necessary to any process of urban planning and management that holds itself to be democratic.

The conflict between a view that space is to be *preserved* and a view that space is to be produced in some sense reflects the incomplete secularization that characterizes modern European contexts. The cathedrals that blanket the landscape and are central to every European metropolis are in harmony with historical accords between church and state in which a carefully constructed balancing of power took shape. They are central to notions of cultural heritage and are enunciated in terms of what is 'proper' for the preservation of, in this case, sacred buildings. If we think in terms of 'the commons', instead, and look to European constitutions, we find declarations of equidistance between all citizens and their governments. Yet the topography of European cities with Catholic cathedrals dominating city centers does not reflect equidistance in today's plural contexts. This is in no way to suggest that these sacred buildings should be removed, quite the contrary. A view of space as 'produced' would look to "the times and rhythms of daily life which are inscribed and prescribed" in urban spaces. It would look for new possibilities which cannot be found without going through a translational process that includes all the existing elements. 'Elements' includes people, buildings, and all the practices that connect them, and sacred spaces are especially adept at revealing the kinetic quality of their relations.

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<sup>29</sup> *Ibid.*, p. 149.

<sup>30</sup> *Ibid.*, p. 151.



#### 4. *Religious heritage vs hierophany: the sacred in motion*

Importantly, the canon law stipulations referred to above reveal the non-thinghood of sacred spaces, for what makes a place sacred is not anything inherent to its materiality per se, but rather what takes place in the space, what is acted into being and the meaning it holds for the people bringing it to life. This acting-into-being must then be ‘de-acted-out-of-being’ when the sacred space is put to new purposes, revealing the thing/not-thing paradox of sacred spaces. Such ‘slippage of being’ is also perceptible in another term that often appears in sacred spaces literature: living heritage. This term has been used to refer to both religious belief and practice as well as the spaces in which it takes place:

The truth of divine revelation is entrusted to the faithful community, which has the responsibility to guard it as a living heritage through a constant process of formulation and reformulation of the doctrines, practices and rituals that keep revelation alive in the believers’ life. [...] sacred places are a living heritage and should be protected and promoted as such.<sup>31</sup>

On the one hand we have the precision that a continually evolving process of formulation of beliefs and practices is not static the way the term ‘heritage’ (thing that is inherited) often implies.<sup>32</sup> Instead, this is a living heritage. On the other hand, sacred places, as objects of protection, are also living heritage. This ambiguity is understandable, particularly since the most cursory of glances outside of one specific geographic context reveals a formidable range of instances of sacred places.<sup>33</sup>

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<sup>31</sup> S. FERRARI, A. BENZO (eds), *Between Cultural Diversity and Common Heritage. Legal and Religious Perspectives on the Sacred Places of the Mediterranean*, Ashgate, Surrey, 2014, p. 22.

<sup>32</sup> UNESCO, for example, defines cultural heritage as follows, “Cultural heritage includes artefacts, monuments, a group of buildings and sites, museums that have a diversity of values including symbolic, historic, artistic, aesthetic, ethnological or anthropological, scientific and social significance. It includes tangible heritage (movable, immobile and underwater), intangible cultural heritage (ICH) embedded into cultural, and natural heritage artefacts, sites or monuments. The definition excludes ICH related to other cultural domains such as festivals, celebration etc. It covers industrial heritage and cave paintings.” The idea of ‘intangible heritage’ obviously tries to get at something non-static, and yet it is nevertheless described as something embedded. Available at <<https://uis.unesco.org/en/glossary-term/cultural-heritage>>, accessed 25 February, 2024.

<sup>33</sup> “Sacred places range from those with very clearly defined borders and physical specifications, to geographical areas, national parks, processions, pilgrimages, sacramental places and places where the faithful congregate and their spiritual leaders teach. Whether they are

Furthermore, the ubiquity of sacrality exceeds even the plurality of sacred spaces, since across most religions of the world in differing forms there is a belief that the entire world and everything in it is divine. Mircea Eliade's concept of hierophany, or the manifestation of the sacred, is a standard reference which describes the possibility of the entire cosmos being or becoming sacred.<sup>34</sup> At the same time, the concept of revelation attests to some places being more sacred than others due to the occurrence of divine events wherein God has revealed some truth or knowledge. The tension between these ideas (God is everywhere, but/and especially here) is part of all the Abrahamic religions and many others as well. Modern scholars across several disciplines have attempted to refine Eliade's concept noting how in today's highly heterogenous communities, sacred sites often appear to have porous boundaries, and can be sometimes officially acknowledged as sacred and at other times seen as "secret-sacred" by different religious communities; landscapes are not always clearly distinguished as sacred/ritual or secular/mundane,<sup>35</sup> making it difficult to maintain a dichotomy between sacred and secular space-making. Though Eliade has been praised and criticized by scores of scholars of sacred spaces, his focus on the role of belief in a nonrational, transcendent cosmic power to interpret spatial phenomena<sup>36</sup> has been strongly influential and remains relevant today. His archetypal view of sacred space as both transcendent and locative lends itself to a more penetrating understanding of today's plural religious landscapes. For if a believer connects the local with the cosmic through religious practice, this has important consequences for understanding the related constructed sacred space. It becomes immediately clear how a temple or a church or a shrine are not reducible to their architectural boundaries but instead straddle the material and the transcendental, the immanent and the holy. Legal regulation that prescribes what these religious 'buildings' are and how they should operate risk steamrolling over the enactment of religious freedom.

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static or dynamic, it appears almost impossible to identify patterns to fit these randomly selected types of sacred place into broader categories." P. PETKOFF, *Finding a Grammar of Consent for 'Soft Law' Guidelines on Sacred Places: The Legal Protection of Sacred Places within the Existing Public International Law*, in FERRARI and BENZO (eds) p. 58.

<sup>34</sup> M. ELIADE, *The Sacred and the Profane. The nature of religion*, trans. W.R. Trask, Harcourt, Brace & World Inc., New York, 1963, p. 12

<sup>35</sup> A. SPICER, S. HAMILTON (eds), 2005, cit. pp. 4-5.

<sup>36</sup> J.E. CAMPO, "Conceptualizing Space and Place Genealogies of Change in the Study of Religion" in J.H. KILDE (ed) *The Oxford Handbook of Religious Space*, OUP, New York, 2022, p. 28.

Indeed, restrictions of freedom are found not only in the regulation controlling houses of worship, but also in buildings granted as 'cultural centers' to non-majority religions which are frequently turned to as a last resort when permission to access or build houses of worship is denied. The right to a house of worship in Italy is strongly conditioned by the existence of an 'intesa', or agreement between a religious denomination and the state, which directly protects the right to a house of worship. There is currently no intesa in place for any form of Islam. Islamic cultural centers are instead more diffuse. Regulations stipulate, however, that these centers may not be used for worship. The resulting lack of solution for Muslim worship leads to the kinds of conflicts I will address in the next chapter.

### *5. The historical bent of the secular/sacred divide. The need for a more 'global' view*

The historical specificity of the sacred/secular divide becomes conspicuous the moment one steps outside of the traditional European frame for at least three reasons. First, the traditional frame no longer reflects the social reality of even Western European societies. Globalization is no longer a phenomenon but rather a state of being that exceeds the connotations of this somehow outdated-feeling term. As the Covid pandemic of 2020 threw into global evidence, the world has officially shrunk and we are no longer immune from contaminations of all varieties, biological, cultural, political, etc. Our digital and physical interconnections make it so that 'there' and 'here' are in constant mutual creation. Second, the inherent long-standing pluralism of geographical areas outside of Europe have historically hosted and continue to host a wide array of interreligious and intercultural practices, both collaborative and competitive<sup>37</sup> which in their diversity resist enclosing definitions and whose relationships with state apparatuses do not follow Western models. Sharing space with people of different faiths and worldviews—with all of the complex interacting this entails—is hardly new and does not reflect

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<sup>37</sup> L. KONG, *Ideological Hegemony and the Political Symbolism of Religious Buildings in Singapore*, in *Environment and Planning D: Society and Space*, 1, 11, 1993, pp. 23-45; ID., *Mapping 'new' geographies of religion: politics and poetics in modernity* in *Progress in Human Geography*, 2, 25, 2001, pp. 211-233, doi:10.1191/030913201678580485; R.M. HAYDEN, *Antagonistic Intolerance. Competitive Sharing of Religious Sites in South Asia and the Balkans* in *Current Anthropology*, v. 43, 2, 2002.

the dichotomies that govern the categorical schemes of Western European societies. Finally, from nearly all indigenous perspectives throughout many geographical contexts, the internal/external or private/public distinction applied to religious/secular does not in any way pertain, as what is isolated into the term 'religion' is instead markedly diffused into how people view the world and live their daily lives. This is of particular importance when viewing the relationship between faith and 'environment' understood broadly. Further elaboration may be useful here.

### 5.1. *Globalization as being*

As is well known, the principle of *cuius regio, eius religio* was intended to provide a clean accord between secular and sacred powers so as to put an end to years of fatal conflict in Europe from the time of the Protestant Reformation, and it was an effective remedy in various ways throughout the 16th and 17th centuries. It seems, however, that it is impossible for humans to remain in categorical boxes, as the principle requests. The continual flows of people across territories and continents have persistently incremented over the centuries such that today it is nearly impossible to find any place on earth that is devoid of 'pluralism'. Important to my arguments here, however, is the need to view pluralism in an expansive way. I do not use the term to refer only to the presence of people from diverse ethnic and national backgrounds in a single territory, but rather to the total permeation of what we might call 'things and ways,' which, I will try to show, are ultimately one and the same. The steamrolling logic of late capitalism has brought with it a series of assumptions that have been successfully adopted by masses of people the world over: 1) all things have monetary value and are exchangeable; 2) individual consumerism is the highest priority; 3) nothing should stop the flow of things and funds. As a result, the salaries of workers in one part of the world are determined by the market demands of another. From food to clothing to electronics, production processes are entirely fragmented, including the sourcing of materials and the labor of assembly. In any given object, several territories are present. Furthermore, the digitalization of life and the massive expansion of the internet and its uses, as well as the advancement of low-cost travel options, puts populations in continual global communication. The news cycle is 24 hours and time zones are almost irrelevant. Both viruses and their cures are spread and managed internationally, even against our will, making global health inescapably

networked. Climate calamities and political warfare alike have dramatic globe-trotting consequences. The promiscuity of culture is an inevitable part of all this. How could the division of secular political life and private religious life stemming from 16th century European conflicts possibly apply uniformly in today's uninhibited pluralism? We might confidently state that we would never go to another country and try to impose our personal preferences upon the people there, and yet today that 'there' is already and constantly 'here'. Entire industries considered fundamental to certain territories depend on the resources and labor of people from geographically distant places. This explosive pluralism raises questions for attempts to hold firm to traditional ways of managing space. The idea of 'common goods', understandably considered to apply to sacred spaces, depends upon a 'common' that may no longer reflect the commoners, that is, the people to whom it is being administered. In Italy, even Christian denominations have struggled to find accommodation when it comes to houses of worship.<sup>38</sup> Whether the group in question is Orthodox Christian or Sikh or Muslim or Buddhist, each community has unique, specific needs and uses for physical spaces. Making determinations based on anachronistic reasoning, strictly tied to local historical understandings of what a sacred space is and does, cannot help but compromise at best, and harm at worst, the communities that seek to realize their religious freedom.

I would like to immediately make clear that the dynamics that emerge in these conflicts are in no way unilateral. The logic of multiculturalism, so pervasive in modern contexts, encourages processes that avoid cultural translation and tend to have reifying effects on minority cultures. The more these groups are conceptually isolated, the more rigid their claims for identitarian recognition become. If the only way to obtain any possibility for religious praxis is through the legal claim for religious freedom, those claims will become louder and more frequent. If religious identity is pigeon-holed into forms of dress, to take a frequently contested example, then those forms of dress will be adopted more often. There is a chicken and egg relationship between minority religions being seen as exceptions and their making claims for exceptionalism on their behalf. Instrumentalist uses and abuses of systems can also result when rights are privileged over freedoms. Religious extremism is not born in isolation but instead develops over time when power imbalances become intemperate.

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<sup>38</sup> F. GIRNEATA, *Secular Legal Spaces and Orthodox Iconic Imagination as Translational 'Fact': A Juridical Anthropological Perspective* in *Oxford Journal of Religion and Law* (forthcoming).

There are always relationships at play, and we can see this from the reverse side as well, since not every religiously plural society has featured conflict.

### 5.2. *The long history of interreligious and intercultural practices*

Despite the dramatic examples of religious conflict today, interreligious praxis has an ancient history that can be fruitfully observed across at least three dimensions. The first and more ‘practical’ of these, so to speak, has to do with the historical proximity and concentration of people of different faiths. Emerging from the crucial role of the Mediterranean Sea as the most important route of exchange (transport, trade, cultures) connecting Asia, North Africa and Southern Europe, centuries of “pre-national” coexistence has seen long eras where “porous religious frontiers” were the norm,<sup>39</sup> and this from both bottom-up and top-down perspectives. The Byzantine Empire, for example, did not initiate any crusades against Islam, and the various Muslim dynasties that ruled those territories seized from the Empire did not seek religious homogenization.<sup>40</sup> The Ottoman Empire saw a kind of symbiosis between Christian and Muslim populations with each worshipping at the shrines of the other.<sup>41</sup> With some exceptions, religious overlapping was widespread in both Christian and Muslim contexts, particularly in the eastern Mediterranean, and research shows that “religious mixing” in an “old Mediterranean order based on enclaves and connections [...] of a patchwork of territories, peoples and religious forms [...] was often socially acceptable.”<sup>42</sup> It was the long serial development of nationalisms following the importation of the Western European homogeneous nation-state model of one language, one religion, one collective identity<sup>43</sup> that gradually led to disruptions and cleavages in previously harmonious multi-religious communities.

The second dimension of long-standing religious intermingling is the sacrality of specific geographical areas which has often led the faithful

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<sup>39</sup> D. ALBERA, M. COUROUCLI (eds), *Sharing Sacred Spaces in the Mediterranean Christians, Muslims, and Jews at Shrines and Sanctuaries*, Indiana University Press, Bloomington, 2012, p. 3. This engaging collection, originally published in 2009 in French, highlights the rich history of religious intermingling in the Mediterranean from ancient to modern times. It elegantly makes the case for the ‘lingua franca’ quality of shared religious vocabularies, cit., p. 244.

<sup>40</sup> *Ibid.*, p. 232.

<sup>41</sup> *Ibid.*, p. 221.

<sup>42</sup> *Ibid.*, p. 223.

<sup>43</sup> *Ibid.*, p. 1.

to be more invested in their connection with their devotional practices than with any desire to distinguish themselves or remain separate from other religious denominations, either for hierological or even nationalistic reasons.<sup>44</sup> Places (including shrines, sanctuaries, monasteries, temples, mosques, churches and more) can be sacred across dominations because of their doctrinal history, and/or because of their connection to a particular religious figure. Among the most prevalent of these figures are the Virgin Mary<sup>45</sup> and St. George<sup>46</sup> who are uniquely important for both Christian and Muslim credos. Nor are such 'contaminations' limited only to Christians and Muslims. More than 100 saints have been found to be revered by both Muslims and Jews<sup>47</sup> leading to shared practices of worship. Examples abound across all the continents of shrines and holy sites that have sprung up after a religious visionary event or revelation and many of these are shared across religions. Though religious institutions have often notoriously sought division and separation of their faithful from those of other denominations, the practices of religious people have long been and continue to be more open to commingling.

A third dimension of religious mixing emerges from the flowing quality of religious praxis which does not limit itself to regular worship in churches as the modern Western imaginary might imagine, but instead permeates all aspects of daily life, from eating and dress codes to ways of inhabiting living space, behaviors determined by the distinction of holy days (e.g. the Sabbath) and so on. Indeed, defining religion using culturally Christian Western European categories has provoked much debate on the question of religion and ethnicity. Whereas Charles Taylor famously defined our modern secular age as one in which religion is a choice, masses of people the world over see religion as something one is born into and that cannot be easily isolated from a biologically or even

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<sup>44</sup> To take just one illustrative example, in the 1980s Muslims and their Christian neighbors joined together at the Palestinian monastery of Mar Elyas to celebrate the feast of the prophet Elias. *Ibid.*, p. 226.

<sup>45</sup> For a study of the interreligious practices of Copts and Muslims in Egypt in relation to the Virgin Mary, see S. KERIAKOS, *Apparitions of the Virgin in Egypt: Improving Relations between Copts and Muslims?* in *Ibid.*, pp. 174-201.

<sup>46</sup> St. George is a fascinating example of a saint who is frequently the object of worship across religious creeds. One scholar describes him "not as one figure but as a conglomerate of transreligious figures who are effectively interchangeable." A study dedicated to St. George in the context of interreligious praxis is offered by M. COUROUCLI, *Saint George the Anatolian: Master of Frontiers* in D. ALBERA, *Conclusion*, cit. p. 118-140.

<sup>47</sup> I. BEN AMI, *Culte des saints et pèlerinages judéo-musulmans au Maroc*. Maisonneuve et Larose, Paris, 1990, pp. 112-114.

racially defined ethnic being. In this sense, religion ‘mixes’ so pervasively with other aspects of life, that it can exceed the boundaries imposed on it by both restrictions and protections offered in the name of religious freedom. Pilgrimages<sup>48</sup> are in some ways a perfect expression or religious praxis that exceeds the confines of closed private spaces and yet are fundamental to many religious traditions.<sup>49</sup> The ‘excesses’ of religion are significant not only for how religious praxis is defined, but also for the very concept of religion. As suggested above, religion and ethnicity are often blurred, as are religion and general ways of being in the world, and this always has ramifications for defining religious space. This leads us to the next consideration: indigenous perspectives of spirituality.

### 5.3. *A World of Many Worlds*

As has been repeatedly described in literatures across legal, anthropological, historical, and social analyses, traditionally Western ways of looking at the world, and specifically religion, are not compatible with vast swaths of indigenous peoples’ world views. Particularly in the Americas, there have been bloody conflicts, legal battles and ongoing tensions between indigenous ways of living and occupying land and those of state entities since the arrival of Europeans in these lands. This is to

<sup>48</sup> For a recent spatial analysis of the meaning of pilgrimages see M. RICCA *Intercultural Spaces of Law*, cit. and references therein, esp. A. MORINIS (ed) *Sacred journeys: the anthropology of pilgrimage*, Greenwood Press, Westport, 1992 and S. COLEMAN and J. EADE (eds), *Reframing pilgrimage: cultures in motion*, Routledge, London, 2004. Victor Turner’s 1973 *The Center Out There: The Pilgrim’s Goal*, was an important early influence on the research that would follow, V. TURNER, *The Center Out There: The Pilgrim’s Goal in History of Religions*, 12, 3, University of Chicago Press, Chicago, 1973.

<sup>49</sup> The persistence of a Eurocentric view allows for the pushing aside of a broader view of religious practice. As of 2023, one quarter of the world’s population is Muslim. It has been reported that 13.5 million pilgrims visited undertook the Umrah pilgrimage to Mecca in 2023, <<https://themedialine.org/mideast-daily-news/record-breaking-13-5-million-muslims-participate-in-umrah-pilgrimage-to-mecca-in-2023/>>. The Hajj pilgrimage, which is one of the pillars of Islam, illustrates the interlacing of belief, rites, and rituals and their bodily interpretation and significance. It is a process that takes place over specific days each year and includes steps such as intention setting, sacrifice and prayer rituals such as throwing pebbles at Jamarat al-Aqaba in a kind of reenactment of Abraham’s act against the devil. Ritual garments are worn throughout. At the end of the Hajj, pilgrims shave their heads or trim their hair such that the pilgrimage is signified in and by their bodies. The much-studied personal identity transformation integral to all pilgrimage is yet another example of how religious praxis cannot be understood to be contained in the *forum internum* or within the walls of a church as the classic Western secularization narrative dictates.



be expected, given the genocidal impetus of these encounters. Today, the increasing urgency of environmental challenges only fuels these clashes as communities contest who and how environmental ‘resources’<sup>50</sup> should be addressed. About indigenous cultures and sacred spaces a great deal has been written. My intention here is only to point out that time and again in jurisprudence ranging from New Zealand to Boliva to Brazil to the US, native communities have fought to preserve a worldview in which religion or spirituality is impossible to divest from all other aspects of life. Bowers and Carpenter offer this eloquent description:

Imagine a place so powerful that only people with years of religious preparation are allowed to visit because of the strength of the medicine in each tree, plant, and rock, each gust of air and drop of water. Imagine a place so secluded that humans can only access it by days of foot travel guided by religious leaders to ensure that the medicine doesn’t harm those daring to enter. Imagine a place occupied by pre-human spirits known as the *Woge* with whom specially trained Indian doctors communicate. Imagine a place that provides medicine to heal the sick, control the weather, and bring peace to the world. This is the ‘High Country,’ the holy land of the Yurok, Karuk, and Tolowa Indians.<sup>51</sup>

A view of sacred spaces that calls for a building or shrine or some other enclosed space to be designated for protection is incommensurable with one in which huge tracts of land are indispensable to the spiritual life and general functioning of a community. I have written about this in the context of water management where for example entire rivers are considered divine and play crucial roles in the functioning of indigenous communities.<sup>52</sup>

The title for this section is borrowed from Blaser and de la Cadena who argue for the making of an ‘uncommons’, defined as “the negotiated coming together of heterogeneous worlds (and their practices) as they strive for what makes each of them be what they are, which is also not without

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<sup>50</sup> I use scare quotes here because the very designation ‘resources’ has been the object of strong critique. Holistic views generally reject the extraction mentality associated with the term resources in favor of models of stewardship, care and interrelationship.

<sup>51</sup> A. BOWERS and K. CARPENTER, *Challenging the Narrative of Conquest: The Story of Lyng v. Northwest Indian Cemetery Protective Association in Indian Law Stories*, C. Goldberg, K. K. Washburn, P. P. Frickey, eds., Foundation Press, 2011.

<sup>52</sup> M.L. VAZQUEZ, *People Moving Water. Religious and Secular Perspectives at Play in Legal Water Management*, in *Quaderni di diritto e politica ecclesiastica*, 2, 2018, pp. 437-465.

others.”<sup>53</sup> This is a deeply relational view which recognizes experiences in which practices and places, defined broadly, are inextricable.

The title of this chapter, instead, makes reference to Donna Haraway’s *Staying with the Trouble, Making Kin in the Chthulucene*, in which the author calls for “making oddkin; that is, we require each other in unexpected collaborations and combinations, in hot compost piles. We become - with each other or not at all.”<sup>54</sup> In this spirit, my goal here is to use ‘trouble’ also as an agentive verb: I would like to trouble or problematize complacent views of sacred spaces that fail to call into question in any far-reaching way what is meant by sacred and what is meant by space. This may appear to be philosophical or even abstract, but it has very real consequences for houses of worship, territorial architectural planning, the law, and of course those who are subject to its rulings. Common space, after all, is both descriptive and predictive. It is space that is being shared and designated through this sharing, and so in some sense it is already the work of translation. The centrality of the ‘main square’ in most European cities is not an objective quality of cities or societies but rather the result of social processes and agreements made and sustained for generations. In order for a space to be ‘common’, decisions must be taken about precisely how the parts will be used, and if necessary divided. And yet space is not something already structured with objective ‘parts’ that can be distributed. While the footprint for a building can be measured, there is no measure for the space of activity and significance a religious space occupies and imbues. Differing cultures understand and use space differently. Nevertheless, urban spaces are bounded by city confines which means there is a limit to the space available. In many cases it must be distributed among competing parties. The term ‘allotments’ is used in the context of British gardening to refer to land plots that can be rented. But in its more general usage we can find the definition, “an amount allotted to a person.” Here once more there is a conception of space as tangibly divisible in quantitatively measured parts. But is ‘amount’ a universal and neutral criterion? If, for example, a minority religion is allocated a large plot of land far outside the city, and a giant house of worship is constructed with a ‘land mass’ that is equivalent to that taken up by several city center churches, is this ‘equitable’? When it comes to city centers, or ‘the commons’, the uses and meanings of existing structures

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<sup>53</sup> M. BLASER and de la CADENA, M. (eds), *A World of Many Worlds*, Duke University Press, London, 2018, p. 3.

<sup>54</sup> D. HARAWAY, *Staying with the Trouble, Making Kin in the Chthulucene*, Duke University Press, London, 2016, p. 4.

and their relationships have already been determined in ways that mirror the identity of previous inhabitants. The *salumerie* and *enoteche* that are ever present in Italian cities, relate differently to Christian churches than they would to mosques and temples since the members of the latter places may not eat pork or drink wine. One religion's building cannot simply be 'swapped in' for another without changing the meaning of the space it fills and all of the space surrounding. And yet urban zoning constraints frequently limit the possibilities to precisely this kind of quantitative treatment of space.

Every use of space is the result of culturally sculpted categorical agreements. These agreements *construct* the buildings and the rules that govern them. They also *determine* specific human actions by facilitating some and restricting others. Again, the presence of religious buildings is not limited to their architectural boundaries but includes the sounds, smells, objects and people that emanate from them. These condition surrounding buildings as well. Any proposed new use of space, whether repurposing previously religious buildings or building new ones must engage a process of translation with past and present uses if it aspires to equity. Otherwise, it risks resorting to the kind of power moves that too often characterize urban decision making, running roughshod over any vision of space or its uses that does not perfectly fit inside the previously established categories.

A lack of effectiveness in determining equitable uses of space goes beyond 'mere injustice.' It may find itself in contrast with constitutional guarantees. In the following chapter I offer an in-depth legal analysis of one case in Italy that acutely highlights the challenges involved when religious exigencies and constitutional jurisprudence meet.

## Chapter II

### *The Tower of Pisa and the ‘Out of Place’ Mosque. Freedom, Rights and Space in the Constitutional Jurisprudence on Places of Worship*

SUMMARY: 1. A legal case and the theoretical reasons for a retrospective on the constitutional jurisprudence on houses of worship – 2. Religion and the rest. Jurisprudential coordinates in the administrative evaluation of local interests and urban space – 3. Freedom as a parameter of constitutional legitimacy and the defectiveness/inexistence of the “right to a house of worship”.

#### *1. A legal case and the theoretical reasons for a retrospective on the constitutional jurisprudence on houses of worship*

As is probably clear by now, on sacred spaces and places of worship, particularly in Italy, a great deal has been written and argued.<sup>55</sup> I think there is something to be gained, however, in doing a deep analysis on certain internal juridical issues of the Constitutional Court brought to light by a recent event: the case of the Pisa Mosque. A case that through its development - so to speak - allows one to see what has almost always remained in the *background*, if not even in the shadows, when dealing with the subject of religious buildings. Of most interest here is the legal relevance of that background, that is, the space that surrounds and contains the symbolic and pragmatic relations of the category ‘place of worship.’<sup>56</sup>

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<sup>55</sup> In a robust literature, see A. BETTETINI, *La condizione giuridica dei luoghi di culto tra autoreferenzialità e principio di effettività*, in *Quaderni di diritto e politica ecclesiastica*, 1, 2010, pp. 3-26; S. BERLINGÒ, *A trent'anni dagli Accordi di Villa Madam: edifice di culto e legislazione civile*, in *Stato, Chiese e pluralism confessionale*, available online at <<https://www.statoechiese.it>>, January 2015.

<sup>56</sup> I will not examine the security issues focused on by many scholars and political analysts connected to the Italian regulation of Islamic places of worship here. In my opinion, these have been generally specious arguments, masking a tendentious intolerance. Proof of this can be found in the fact that today, now that the phase of terrorist emergency and the related anti-Islamic or Islamophobic propaganda has faded, almost no one—not even the Constitutional Court—takes the security dimension into consideration when analyzing

I will begin with a linguistic observation. In the jurisprudence of the Constitutional Court, expressions such as ‘space’ and ‘place’ are treated as synonyms. As a case in point, we can review Judgment no. 254/2019<sup>57</sup> and the references to previous jurisprudence therein<sup>58</sup>:

Freedom of worship also translates into the right to have adequate space to be able to concretely exercise it (Sentence no. 67 of 2017) and therefore more precisely entails a twofold duty for the public authorities responsible for regulating and managing land

the ‘building outlines’ of religious freedom. This could be defined as an abiding issue, but in my view, it becomes so simply because it is fundamentally connected to modes of exploitation that are, and have typically been, politically motivated.

<sup>57</sup> Sentence n. 254/2019 is available online at <<https://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2019&numero=254>>, accessed March 10, 2024.

<sup>58</sup> With specific regard to constitutional pronouncements as well as those produced by the administrative jurisprudence referred to here, see C. LAPI, *Il caso non risolto della moschea di Pisa. La libertà di culto schiava di referendum locali e varianti urbanistiche*, in *Diritto e religioni*, 1, 2020, pp. 347-359; EAD., *Laicità e diritto all'edificio di culto*, in *Stato, Chiese e pluralismo confessionale*, online journal <<https://www.statoechiese.it>>, 19, 2020, p. 107 ff; G. ANELLO, *Constitution Before Administration: The Latest Decision on the Italian Constitutional Court Fosters the Freedom of Religion in Italy*, in *VerfBlog*, 2019, <[https://intr2dok.vifarecht.de/receive/mir\\_mods\\_00007985?q=giancarlo%20anello](https://intr2dok.vifarecht.de/receive/mir_mods_00007985?q=giancarlo%20anello)>; A. CALLAIOLI, *La decisione del TAR Toscana sulla realizzazione della moschea a Pisa*, in *Scienza & Pace Magazine* (edited by the Centro Interdisciplinare Scienze per la Pace – University of Pisa), online journal, 25 June 2020; G. CAROBENE, *La cosiddetta normativa ‘anti moschee’ tra politiche di governance e tutela della libertà di culto*, in *Stato, Chiese e pluralismo confessionale*, online journal <<https://www.statoechiese.it>>, 4, 2020, p. 22 ff.; M. CROCE, *Edilizia di culto dopo la sentenza n. 63/2016: esigenze di libertà, ragionevoli limitazioni e riparto di competenze fra Stato e Regioni*, in *Forum costituzionale*, 5, 2016; P. CAVANA, *Libertà di religione e spazi per il culto tra consolidate tutele e nuove comunità religiose*, in *Stato, Chiese e pluralismo confessionale*, online journal <<https://www.statoechiese.it>>, 20, 2019, p. 19 ss.; N. MARCHEI, *La Corte costituzionale sugli edifici di culto tra limiti alla libertà religiosa e interventi positivi*, in *Stato, Chiese e pluralismo confessionale*, online journal <<https://www.statoechiese.it>>, 5, 2020, p. 64 ff.; A. LICASTRO, *Libertà religiosa e competenze amministrative decentrate*, in *Stato, Chiese e pluralismo confessionale*, online journal <<https://www.statoechiese.it>>, November 2010, p. 1 ff.; I. BOLGIANI, *Attrezzature religiose e pianificazione urbanistica: luci ed ombre*, in *Stato, Chiese e pluralismo confessionale*, online journal <<https://www.statoechiese.it>>, 2013, p. 1 ff.; G. P. PAROLIN, *Edilizia di culto e legislazione regionale nella giurisprudenza costituzionale: dalla sentenza 195/1993 alla sentenza 346/2002*, in *Giurisprudenza italiana*, 2003, p. 351 ff.; M. M. PORCELLUZZI, *In difesa della libertà religiosa: la corte costituzionale e la legge lombarda sull'edilizia di culto*, in *Diritti Comparati Comparare. I diritti fondamentali in Europa*, 19 dicembre 2019; G. TROPEA, *Edilizia di culto: un importante passo avanti verso la ‘laicità positiva’, note a Corte cost. N. 254/2019*, in *Costituzione e carta di diritti fondamentali*, 24 dicembre 2019; G. D’ANGELO, *Pronunce recenti in materia di edifici ed edilizia di culto: uno sguardo d’insieme*, in *Quaderni di diritto e politica ecclesiastica*, 3, 2008, pp. 737-759.

use (essentially the regions and municipalities): positively—in application of the aforementioned principle of secularism—it implies that the competent administrations provide and make available public spaces for religious activities; negatively, it requires that unjustified obstacles to the exercise of worship in private places are not placed in the way and that denominations are not discriminated against in accessing public spaces (Judgments no. 63 of 2016, no. 346 of 2002 and no. 195 of 1993).

In the wake of the Constitutional Court's promiscuous use of the terms 'space' and 'place,' most doctrine has also made lavish use of mixed expressions: e.g., 'spaces appropriate for the establishment of places of worship.' In the fields of geography, architecture, anthropology, sociology and philosophy, however, the terms 'space' and 'place' have been the subject of intense and extensive research. Distinctions of profound significance have been made between them, aimed at highlighting their difference in relational terms, or with reference to the subject-object, individual-space relationship, underlying the very idea of 'space' or that of 'place'—even from a comparative perspective. After all, one of the best-known texts in cultural anthropology in recent years—I refer to the well-known *Non-Places: An Introduction to Supermodernity*<sup>59</sup>—is based precisely on the implicit assumption of the categorical distinction between 'spaces' and 'places.' Of all this, however, there seems to be no trace in the arguments of the Constitutional Court and the jurists who have addressed the subject of 'houses of worship' in the wake of the rulings considered here.

Let me point out immediately that the distinction made in other disciplinary areas is far from irrelevant on the technical-legal level or, to express it differently, on the level of positive law in a strict sense. As I will try to show, the consequences of an indifference—often desired and proudly defended by jurists—regarding meanings elaborated in other spheres of knowledge can result in a denial of rights in decisions laden with constitutional injustice. Understanding phenomena that are subject to legal regulation demands a wide-ranging exploration of their possible implications and, therefore, an interdisciplinary journey on the part of the interpreter of law. This is required because law is a *practical science*—as a famous text by an Italian jurist of the last century put it<sup>60</sup>—not a discipline exclusively reserved for those who are concerned with *its practice*, that is, its

<sup>59</sup> M. AUGÉ, *Non-Places: An Introduction to Supermodernity*, trans. John Howe, Verso, London, 2009.

<sup>60</sup> S. PUGLIATTI, *La giurisprudenza come scienza pratica*, Giuffrè, Milano, 1950.

elaboration seen from an empirical perspective and piloted by knowledge that coincides with the lexicon and conceptualizations of the so-called *common language*. To return to the topic at hand—that ‘spaces’ and ‘places,’ in colloquial language, are used promiscuously and without precise distinctions—in no way authorizes jurists to regard the phenomena subject to legal qualification, and *roughly* falling within the semantic spectrum of these terms, as totally equivalent. And this is because each of the two ‘magnitudes,’ if properly considered, gives rise to considerable implications in terms of legal relevance, warranted protection and, above all, equality, understood as a *spectrum* in which, through the exercise of reasonableness, the entire arc of constitutional values is squared.<sup>61</sup>

Even so, I find the distinction between ‘space’ and ‘place’ as formulated in the extra-judicial disciplines mentioned above, or at least in the related arguments proposed by those authors who have established a sort of mainstream view<sup>62</sup> to be lacking for a series of reasons I will immediately, if

<sup>61</sup> See F. MODUGNO, *L'invalidità delle leggi. Vol.1.*, Giuffrè, Milano, 1970, p. 342, where he observes: “Più in generale può dirsi, in definitiva, che tanto i criteri giustificativi delle discriminazioni, pur in presenza del generale divieto, in principio, di ogni arbitraria discriminazione, quanto, all'opposto, i criteri dai quali è possibile ricavare i limiti positivi alla disciplina legislativa e quindi i confini oltre i quali quest'ultima deve considerarsi ingiustificata, arbitraria, e irrazionale, non possono non ricavarsi dalle altre disposizioni costituzionali suscettibili di costituire parametro e che costituiscono quindi nella loro unità sistematica le determinazioni particolari nelle quali si squaderna la regola universale dell'uguaglianza.” In the same vein see, A. PACE *Interpretazione per valori e interpretazione costituzionale*, in G. AZZARITI (ed), *Interpretazione costituzionale*, Giappichelli, Torino, 2006, p. 54 ff.

<sup>62</sup> The origin of the ‘space/ place’ dichotomy can be retraced in Y.F. TUAN, *Space and Place: The Perspective of Experience*, University of Minnesota Press, Minneapolis, 1977; and other references within, E.S. CASEY, *The Fate of Place: A Philosophical History*, University of California Press, Los Angeles, 1997. As for the literature concerning the definition of space, territory and place as related to projections of subjectivity see, for a wide range of perspectives, at least the following: A. BRIGHENTI, *On Territory As Relationship and Law as Territory*, in *Canadian Journal of Law and Society*, 2, 2006, pp. 65–86, <<https://doi.org/10.1017/S0829320100008954>>, 2006.; Id., *On Territorology: Towards a General Science of Territory*, in *Theory, Culture and Society*, 1, 2010, pp. 52–72, <<https://doi.org/10.1177/0263276409350357>>; R. N. ST. CLAIR, A. C. T. WILLIAMS, *The Framework of Cultural Space*, in *Intercultural Communication Studies*, 1, 2008, pp. 1–14; A. C. DAWSON, L. ZANOTTI, I. VACCARO (eds), *Negotiating Territoriality: Spatial Dialogues Between State and Tradition*, Routledge, New York, 2014, pp. 1–20; D. DELANEY, *Territory: A Short Introduction*, Wiley-Blackwell, Oxford, 2005; G. DESMARAIS, *The Sacred Place: A Morphodynamic Hypothesis for the Foundation of Human Settlement*, in *Nordic Journal of Architectural Research*, 4, 1995, pp. 39–50; S. ELDEN, *The Birth of Territory*, University of Chicago Press, Chicago, 2013; J. GOTTMAN, *The Significance of Territory*, University of Virginia Press, Charlottesville, 1973; M. KÄRRHOLM, *The Materiality of Territorial Production: A*

briefly, describe. I take issue, to begin, with the sharpness of the distinction, but this does not in any way imply that such a distinction and the theories that support it can be ignored in the legal qualification of the experience of space, understood in all its iterations (including, therefore, urban and religious ones). There are however other elements I find problematic.

A common categorical distinction made between 'space' and 'place' is the idea that the former is not the object of a pre-existing work of semantization. 'Space,' in other words, is likened—almost in Newtonian terms—to 'emptiness,' to a sphere that is available to accommodate experience but is as yet unmapped by the categorical scans and boundaries that carry the production of meaning. In this view, 'space' is considered somehow neu-

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*Conceptual Discussion of Territoriality, Materiality, and the Everyday Life of Public Space*, in *Space and Culture*, 4, 2007, pp. 437-453, <<https://doi.org/10.1177/1206331207304356>>; H. LEFEBVRE, *The Production of Space*, trans. Donald Nicholson-Smith, Wiley, Oxford, 1991 (1974); P. MÄÄTTÄNEN, *Semiotics of Space: Peirce and Lefebvre*, in *Semiotica*, 166, 2007, pp. 453-461, <<https://doi.org/10.1515/SEM.2007.067>>; T. MALMBERG, *Human Territoriality: Survey of the Behavioral Territoriality with Preliminary Analysis and Discussion of Meaning*, Mouton De Gruyter, New York, 1980; J.E. MALPAS, *Place and Experience: A Philosophical Topography*, Cambridge University Press, Cambridge, 1999; D. MASSEY, *For Space*, Sage Publications, New Delhi, 1999; A. PHILIPPOPOULOS-MIHALOPOULOS, *Spatial Justice: Body, Landscape, Atmosphere*, Routledge, New York, 2015; ID., *And For Law: Why Space cannot be understood without Law*, in *Law, Culture and the Humanities*, 3, 2021, pp. 620-639, <<https://doi.org/10.1177/1743872118765708>>; W. PRIGGE, *Reading the Urban Revolution: Space and Representation*, in K. GOONEWARDENA, S. KIPFER, R. MILGRAM, C. SCHMID (eds), *Space, Difference, Everyday Life*, Taylor & Francis, New York, 2008, pp. 46-61; C. RAFFESTIN, S. A. BUTLER, *Space Territory and Territoriality*, in *Environment and Planning D: Society and Space*, 1, 2012, pp. 121-141, [doi:10.1068/d21311](https://doi.org/10.1068/d21311); R.D. SACK, *Human Territoriality: Its Theory and History*, Cambridge University Press, Cambridge, 1986; N. THRIFT, *Non-Representational Theory: Space, Politics, Affect*, Routledge, New York, 2007; R. B. TAYLOR, *Human Territorial Functioning*, Cambridge University Press, Cambridge, 1988; S. SASSEN, *Territory, Authority, Rights. From Medieval to Global Assemblages*, Princeton University Press, Princeton, 2006. For a critical reflection on the relationship between culture and space, see S. WHATMORE, *Hybrid Geographies: Natures, Cultures, Spaces*, Sage Publications, London – Thousand Oaks – New Delhi, 2002. With specific reference to 'sacred places' and the dialectic sacred/profane space see M. ELIADE, *Patterns in Comparative Religions*, Sheed & Ward, London – New York, 1958, p. 367 ff.; ID., *The Sacred and the Profane: The Nature of Religion*, trans. Willard R. Trask, Harcourt, Brace & World, Inc., New York, 1963, p. 21 ff.; A. LIDOV, *Creating the Sacred Space: Hierotopy as a New Field of Cultural History*, in C. CREMONESI, L. CARNEVALE, *Spazi e percorsi sacri. I santuari, le vie, i corpi*, in [libreriauniversitaria.it](http://libreriauniversitaria.it), Padova, 2014, pp. 63-92. Drawing inspiration from these cited works, I began to investigate the topic in its legal implications in an earlier publication, see M. L. VAZQUEZ, *End of Secular City Limits? On Law's Religious Neutrality in the City*, in *Int J Semiot Law*, 35, 2020, pp. 259-286, <<https://doi.org/10.1007/s11196-020-09742-5>> and the bibliography therein.



tral. 'Place,' instead, is the result of anthropization, of the enculturation of 'space.' In short, it is understood as the result of the mapping of 'indeterminate extension' by the scans generated by experience, by human action and its projection toward the world, and by the processes of its incorporation. In this sense, 'home' is the place *par excellence*. So too, however, are the city, the public street in its opposition to private spaces, parks, and even the landscape, when it serves as the object of the representations that shape it, recognizing and highlighting its anthropic traces.<sup>63</sup>

We can already see from these preliminary observations how the linguistic *promiscuity* used by both the Court and its commentators shows how any understanding of the regulated cases, even at the midpoint of the judicial syllogism's construction, becomes nebulous, if only because it is based on pre-conceived notions, on categories whose meanings are so taken for granted that they ultimately indulge in a reckless synonymy.<sup>64</sup> In the

<sup>63</sup> For the genealogy of the landscape concept, see A. VON HUMBOLDT, *Views of Nature*, trans. M.W. PERSON, S.T. JACKSON, L.D. WALLS (eds), University of Chicago Press, Chicago and London, 2014; J.W. RITTER, J. HOLLAND, *Key Texts of Johann Wilhelm Ritter (1776-1810) on the Science and Art of Nature*, Brill, Leiden, 2010; E. TURRI, *Antropologia del paesaggio*, Marsiglio, Venice, 2008; Id., *Semiologia del paesaggio italiano*, Marsiglio, Venice, 2014. For the evolution of the legal idea of landscape in Italy, see D. D'AMICO, *L'evoluzione del concetto di paesaggio tra legislazione e giurisprudenza costituzionale*, in *Ratio iuris*, 2018, XLV <<https://www.ratioiuris.it/levoluzione-del-concetto-paesaggio-legislazione-giurisprudenza-costituzionale>>; R. FATTIBENE, *L'evoluzione del concetto di paesaggio tra norme e giurisprudenza costituzionale: dalla cristallizzazione all'identità*, in F. DEL PIZZO and P. GIUSTINIANI (eds.), *Biosfera, Acqua, Bellezza, Questioni di bioetica ambientale* [online], Milan, 2016, ff. 57-74, available online. Taking inspiration from the works here cited, I attempted to address the legal implications of the topic in, M. L. VAZQUEZ, *End of Secular City Limits* (2022), cit., esp. 277.

<sup>64</sup> The interpretive attitude I refer to proves to be deeply inconsistent with the stated guidelines of the methodology of legal positivism, let alone its analytical approach. Similar critical outlines, moreover, can be traced throughout the legal literature on church buildings, especially where the subject is analyzed in relation to the issue of so-called 'urban spaces'. See for example, R. MAZZOLA, *Laicità e spazi urbani. Il fenomeno religioso tra governo municipale e giustizia amministrativa*, in *Stato, Chiese e pluralismo confessionale*, online journal <<https://www.statoechiese.it>>, 2010, ff. 1-19. A worthy exception can instead be found in the interesting essay by F. FRANCESCHI, *Liturgie della città, spazi urbani e proiezioni pubbliche della pluralità religiosa*, in *Calumet – Intercultural Law*, 9, 2019, pp. 105-130. On the analysis of the concept of 'sacred space' by both research in the sociology of religions and more recent production attributable to 'cultural geography', see J. Z. SMITH, *Map Is Not Territory*, Brill, Leiden, 1978, esp. pp. 88 ff.; idem, *Introduction*, D. CHIDESTER, E. T. LINENTHAL (eds.), *American Sacred Space*, Indiana University Press, Bloomington, 1995, pp. 1-42; esp. p. 16 ff.; J. HOLLOWAY, *Make-believe: Spiritual Practice, Embodiment and Sacred Space*, in *Environment and Planning A* 2003, Vol. 35, pp. 1961-1974, esp. p.1962; S. HAMILTON, A. SPICER, *Defining the Holy: The Delineation of Sacred Space*, in, A. SPICER,

excerpt quoted earlier, the words 'spaces,' 'territory,' and 'places'—accompanied in the rest of the pronouncement by the terms 'place of worship' or 'building of worship'—are employed with scant precision, as if they were mutually substitutable. The judge's language seems more metaphorical than defining, even though it is then used referentially, that is, as if it were making use of objective concrete entities placed in the extra-linguistic world. However, this makes it somewhat problematic to determine: a) to what phenomenon the administrative acts, laws, constitutional norms and supranational norms are applied; and b) which legal norms should be considered relevant to the case in question given that the objects deemed 'worthy of protection' correspond to multiple possible meanings (and respective semantic components).

I will elaborate on all this later. For the moment, and before outlining the extremes of the case underlying my analysis, I would like to express the reasons for my theoretical divergence from the distinction between 'space' and 'place' as put forth by broad strands of the extra-legal disciplines referred to above. In my view, *empty, indeterminate space* is only a fiction - moreover, one of physical origin. The space of everyday human experience is always semantized, even if only in potential terms. Even a space not yet known, never before frequented, that lies before a human being represents a horizon of potential that is already endowed with meaning at its first appearance. Even before it is consciously interpreted, its mere *materializa-*

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S. HAMILTON (eds) *Defining the Holy: Sacred Space in Medieval and Early Modern Europe*, Routledge, Abingdon, Oxon - New York, 2016, pp. 1-25; L. KONG, *Ideological Hegemony and the Political Symbolism of Religious Buildings in Singapore*, 1993, cit, pp. 23-45; Id., *Mapping 'new' geographies of religion: politics and poetics in modernity* in *Progress in Human Geography*, 200, cit; Id., *In search of permanent homes: Singapore's house churches and the politics of space*, in *Urban Studies*, 2002, 39, pp. 1573-1586; V. DELLA DORA, *Virtual Issue 13: Sacred Space Unbounded*, in *Society and Space*, 2015 (13); Id., *Infrasecular Geographies: Making, Unmaking and Remaking Sacred Space*, in *Progress in Human Geography*, 2018, Vol. 42, 1: 44-71, <<https://doi.org/10.1177/03091325166666190>>. Historical analyses of the relationship between sacred and secular space, especially in relation to processes of secularization, are available in W. COSTER, A. SPICER, *Introduction: The Dimensions of Sacred Space in Reformation Europe*, (eds.), in *Sacred Space in Early Modern Europe*, Cambridge University Press, Cambridge. 2005, pp. 1-16; K. KNOTT, *The Location of Religion*, Routledge, Abingdon, Oxon - New York, 2014 (2005). For specific reference to the meaning of 'sacred place' in Islam see Y. PALLAVICINI, *'God has made the earth like a carpet': The Sacred Places in the Islamic Tradition* in *Between Cultural Diversity and Common Heritage: Legal and Religious Perspectives on the Sacred Places of the Mediterranean*, S. FERRARI, A. BENZO, (eds.), *Between Cultural Diversity and Common Heritage: Legal and Religious Perspectives on the Sacred Places of the Mediterranean*, Routledge, Abingdon, Oxon - New York, 2014, 101 ff.

*tion before the observer* produces a pre-conscious interpretive reaction that scans it—again, even if only in potential terms, aesthetically, adaptively, ethically, etc., positive, or negative. Space is already embedded before it is understood, before it is made the object of conscious symbolic projection.<sup>65</sup> Cosmic space itself—anything but empty from the same physical point of view, in that it is constantly traversed by immeasurable streams of particles—is considered by humans to be empty; yet its being empty is for us an obstacle, a front of resistance that is tremendously difficult to overcome.<sup>66</sup> Without the protection of a space suit, cosmic space would embody the essence of the annihilation of human possibility. If all this is right, then there is no oppositional distinction between space and place. If anything, it is a diversification along a scale of intensity of semantization. All this assumes that the meaning of places, their categorization, corresponds to pre-established ontological patterns and does not instead represent interlocutory moments of constantly ongoing processes. Processes where what changes is not only the individual empirical place, the extension of the category (the range of entities included in it), but rather the very pattern of signification of empirical places. As I will try to show at a technical-positive level, these observations which may seem to be of only theoretical relevance, are actually indispensable to the understanding of the phenomenon of the establishment of mosques, and with them of buildings connected to non-native cultural/religious communities within the pre-semantized space of state sovereignty. And this is precisely because they help us to understand the transformative dimension of social experience, and thus the qualifying function of living law, its necessarily open structure which is in line with a diachronic projection of the effectiveness and meaning of the Italian Constitution.

When the Constitutional Court speaks of ‘adequate spaces’ it seems to be implicitly—and, unfortunately, not entirely consciously—referring to urban spaces that are by definition *already filled*, already *imbued with semantic classifications*. At the same time, in the very same paragraph, it evidently alludes to a physical-spatial extension *yet to be filled* but in relation to something—the *place* of worship and, therefore, the *house* of worship—that is already defined, hence the coupling with the adjective ‘adequate.’

<sup>65</sup> M. RICCA, *Sussidiarietà orizzontale e dinamica degli spazi sociali. Ipotesi per una corologia giuridica*, in M. NUZZO (ed), *Il principio di sussidiarietà nel diritto privato*, I., Giappichelli, Torino, 2014, p. 15 ff.

<sup>66</sup> In this sense, see M. RICCA, *Sussidiarietà orizzontale* cit.; ID., *Cultures in Orbit, or Justifying Differences in Cosmic Space: On Categorization, Territorialization and Rights Recognition*, in *Int J Semiot Law*, 4, 2018, p. 829 ff.

*Adequate empty spaces*: this is the summary formula of the phenomenon under consideration. On closer inspection, however, it seems almost oxymoronic. Indeed, what *is* a truly *empty* space in an urban area? Is its being empty not always in relation to *something*? So that its emptiness can only come from difference, a difference that presupposes the other from itself, its counterpart and, at the same time, a sphere that houses the process and structure of differentiation—precisely, the city? And further: '*adequate*'? If it is empty, how can it already be *adequate*? If anything, it *becomes* adequate as the result of a process of symbolic signification and overall urban planning. Or, alternatively, is it adequate in the sense that the eventual destination to become the host of a place—in the first sense—constitutes the summation, the summary of a series of possible relationships with the surrounding space, and thus with meanings, with experiences, with purposes explicitly and/or implicitly embedded within it? And if so, what are these relations, what are the standards for their categorization, what are the ends/values connected to the corresponding processes of categorization, and, therefore, what are the avenues of compatibility between them and the multilevel predictions of the legal system?

In some passages of pronouncement no. 254/2019 the adjective 'adequate' seems to refer to religious freedom. Even so, however, questions arise that are far from simple. What is the relationship of *adequacy* to specific ways of exercising religious freedom and the space that should accommodate it? Further on, I will try to show that the pair 'religion/building' has immediate spatial implications and, therefore, that the aprioristic determination of an adequate space for religious freedom always involves a relational judgment between the pragmatic projections of religion and the semantic-spatial coordinates already produced by human cultural activity on the topographical and existential/cultural plane.<sup>67</sup>

As can be easily seen, to the previous questions the Constitutional Court has already given an implicit but, at the same time, rather laconic answer, in judgments 195 of 1963 and 63 of 2016,<sup>68</sup> both of which, more-

<sup>67</sup> With specific reference to the relationship between the articulation of urban spaces and cultural pluralism, see J. BLOOMFIELD, F. BIANCHINI, *Planning for the Intercultural City*, Comedia, Stroud (UK), 2004; M. BALBO, *Contemporary Urban Spaces and the Intercultural City*, in G. MARCONI, E. OSTANEL (eds), *The Intercultural City: Migration, Minorities and the Management of Diversity*, I.B. Tauris, London, 2016, pp. 25-38; A. HARRIS, J. GARNETT (eds), *Rescripting Religion in the City: Migration and Religious Identity in the Modern Metropolis*, Routledge, London - New York, 2018; H. BERKING, S. STEETS, J. SCHWENK (eds), *Religious Pluralism and the City. Inquiries into Postsecular Urbanism*, Bloomsbury, London, 2018.

<sup>68</sup> Regarding sentence 63/2016 among many others, see, P. CAVANA, *Libertà di religione e*

over, were referred to in ruling 254/2019, already cited, concerning the constitutionality of Article 72, paragraph 2, of Lombardy Regional Law No. 12 of 2005, introduced by Lombardy Regional Law No. 2 of 2015.<sup>69</sup> In this regard, the Court observes, citing itself:

The regional legislation on the building of houses of worship ‘finds its reason and justification—proper to the urban planning matter—in the need to ensure a balanced and harmonious development of housing centers and in the delivery of services of public interest in their broadest sense, which therefore also includes religious services’ (Judgment no. 195 of 1993) (Judgment no. 63 of 2016). In this context, ‘the Region is entitled, in regulating the coexistence of the different interests present on its territory, to dedicate specific provisions for the planning and implementation of places of worship and, in the exercise of these powers, may impose those conditions and limitations which are strictly necessary to guarantee the purposes of government of the territory entrusted to its care’ (Judgment no. 67 of 2017). In the exercise of its powers, however, the regional legislature ‘may never pursue purposes that are beyond the scope of the region’s duties,’ as it is forbidden, specifically, to introduce ‘within a law on territorial government [...] provisions that hinder or compromise freedom of religion’ (Judgment no. 63 of 2016).

In light of the albeit brief points illustrated above regarding the relationship between space and place, the phrase ‘balanced and harmonious development of housing centers and in the implementation of services of public interest in their broadest sense’ seems vague, to say the least. What are the evaluation standards and elements to be taken into consideration when determining whether urban planning is ‘balanced’ and ‘harmonious’?

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*spazi per il culto tra consolidate tutele e nuove comunità religiose*, in *Stato, Chiese e pluralismo confessionale*, online journal <<https://www.statoechiese.it>>, 20, 2019 and A. LORENZETTI, *La Corte costituzionale e l’edilizia di culto: alla ricerca di un difficile equilibrio, fra riparto de competenze, libertà religiosa e il ‘convitato di pietra’ dell’emergenza terrorismo* in *Forum di Quaderni Costituzionali*, 30 March 2017; L. BRUNETTI, *Libertà religiosa e ordine pubblico. Tra bilanciamento e prevalenza*, in *Forum di Quaderni Costituzionali*, 9 December 2019, esp. p. 23 ff.

<sup>69</sup> For some interesting reflections on this sentence, see F. OLIOSI, *La legge regionale lombarda e la libertà di religione: storia di un culto (non) ammesso e di uno (non?) ammissibile*, in *Stato, Chiese e pluralismo confessionale*, online journal <<https://www.statoechiese.it>>, 3, 2016, pp. 2-38 and ID., *La Corte Costituzionale e la legge regionale lombarda: cronaca di una morte annunciata o di un’opportunità mancata?* in *Stato, Chiese e pluralismo confessionale*, online journal <<https://www.statoechiese.it>>, 33, 2016, pp. 2-29.

How is the dynamic of the meaning of relationships among the phenomena that animate the life of the territory over time to be considered? And, above all, how should we define their legal significance? What is their connection with legally protected interests, to be considered with specific reference to the etymological matrices of the term *inter-esse*? And what, thus, stands between the subject of law and their social space considered in its relational and intersubjective manifestations, and as such mediated in its construction and signification by the values/purposes of the legal system? More specifically, what are people who must abide by the judgement to take from it? What can be extracted from the formula employed when it comes to the construction of the space of urban coexistence by subjects belonging to different cultures and traditions who attribute to objects, gestures, modes of communication, and activities, meanings that are profoundly different from those conferred on them by Italian culture? And, again, given the Court's widespread use of the term *territory*, what relationship do the constitutional judges see between this territory and the words 'space' and 'place'? Once again, the language of the constitutional judge demonstrates a poorly calibrated use of terms, especially with regard to their relationship to the subjective and dynamic—and therefore also political—dimension that seems to distinguish *territory* from *space*.

The possessive relationship—frequently highlighted in geographic-cultural research<sup>70</sup>—included in the term *territory* certainly cannot be made sense of from a biological-ethological perspective. Although attempts of this kind have been made,<sup>71</sup> within urban phenomenology the relationship between subject and space—often articulated in terms of power—is filtered and transfigured by the sedimentation of symbolic-cultural elements. From this point of view, the use of the word *territory*, if based on the processes of construction of relational spaces and places of a state with a democratic-liberal constitution, will have to be interpreted following an individually focused pluralistic and participatory 'best effort' mapping of spaces of experience. What, then, can and should be the criterion for dealing with the word *territory*, and the experiences it designates and pre-figures, when there are such profound cultural and religious differences that the very meaning of objects, gestures, conduct, etc., change? How to interpret the adjective *adequate*, referring to space, and used by the Court itself, in light of a pluralistic dynamic in which the facts themselves—their

<sup>70</sup> See the literature on territorialization cited above.

<sup>71</sup> R. ARDREY, *The Territorial Imperative: A Personal Inquiry into the Animal Origins of Property and Nations*, Atheneum Publishers, New York, 1966.

empirical dimension—appear likely to take on different meanings depending on cultural perspectives and, therefore, on their semantization? And, above all, where might we take into account that each different perspective of semantization could reveal entirely unprecedented indices of legislative and constitutional relevance, competing with each other in ways that may induce a reshaping of the semantic spectrum of words contained in laws or administrative acts, such as, for example, the expression: *place of worship*?

In simpler and more explicit terms, and in the light of the preceding questions and the epistemological considerations therein, can one be certain that it possible to use ‘place of worship’ as a scheme of signification relating to an objective referent, placed *out there*, endowed with an *indisputable* meaning and corresponding, in its semantic core, to some primary property of an entity or class of entities distinct from anything else the subject enters into relation with, or *sets their eyes on*? Putting the question in crude terms: can one be sure that ‘church’ or ‘mosque’ mean the same thing with respect to the exercise of religious freedom or, as the doctrine would have it, of the ‘right to the house of worship’ emanating from the most recent rulings by the Constitutional Court referred to above? And all this, especially with reference to the relational dimension of those ‘places,’ namely, the way they enter into relationship with the surrounding space, and are impacted by human actions that are shaped by and imbued with cultural signification?

My reflections in point of law, and with them the retrospective reading of the Constitutional Court’s jurisprudence in the field of buildings of worship, have been prompted by the recent Pisa mosque case because it reveals a sort of concentrate of the issues. The Tuscany Regional Administrative Court ruling published on 1/6/2020, no. 00992/2019 Reg Ric<sup>72</sup> provides a helpful model of the extremes. The judicial case takes its starting point from the appeal filed by the representative of the Islamic Association of Pisa, owner of a ‘buildable area’ which was purchased by the same Association primarily because it was designated as grounds for a religious building by the Urban Regulations. The area where the property was located was included within the territorial perimeter subject to the *Declaration of Important Archaeological Interest of the Urban Areas of Pisa* issued by the Archaeological Authority of the Region of Tuscany pursuant to law 1089/1939. In 2016, the Islamic Cultural Association of Pisa submitted the required application to the Municipality of Pisa for the purpose of constructing a building of worship and an adjoining cultural

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<sup>72</sup> TAR Sentence available online.

center. The Municipal Administration then initiated the administrative procedure by involving the *Soprintendenza Archeologica alle Belle Arti e al Paesaggio* (roughly, 'Archaeological Authority for Fine Arts and Landscape') for the provinces of Pisa and Livorno in order to render the opinion ex art. 146 d., no. 42/2004. The body in charge provided a favorable opinion with the addition of some changes to the project and the invitation to carry out some preventive archaeological tests under the direction of the same Authority and at the expense of the Applicant. Following the opinion of the Authority, the Applicant Cultural Association submitted a modification of the building project in line with the requests received. However, after a few days, the Municipal Administration, in accordance with Article 10 bis of Law 241/1990, informed the Applicant Association of the existence of certain factors that impeded the issuance of the building permit and the continuation of the related preliminary investigation. The obstructive factors consisted in the non-compliance with a buffer zone provided for in the requirements of the Authority and other factors pertaining to the issuance of a landscape permit that the same Authority—despite the prior favorable opinion—would not, at the time of the communication of the denial, carry out. In the denial order, it was also stated that a material error had been found in the section concerning archaeological protection related to the issuance of the building permit which caused a logical flaw in the act. Consequently, the Administration proceeded to annul the act, committing itself to the reissue of the act in question, with an amendment of the indicated material error. Therefore, on June 13, 2019, the Municipality of Pisa issued the denial measure regarding the application for the construction of the religious building and cultural center submitted by the Islamic Cultural Association of Pisa on May 9<sup>th</sup>, 2016. In the absence of the issuance of the new opinion of the Superintendence preannounced by the Municipality, the Cultural Association appealed to the Tuscany Regional Administrative Court.

The whole affair, however, is marked by a 'parallel story' that accompanied the denial of the building application. With a series of resolutions, which for the sake of brevity will not be indicated here in detail,<sup>73</sup> the Municipality of Pisa came to approve a variant of the urban plan aimed at converting the designation of the area which included the Islamic Cultural Association's property. The urban planning variant converted the area in question from being designated for a religious building to being desig-

<sup>73</sup> For the detailed account, see the TAR ruling available at <<https://territorio.regione.emilia-romagna.it/codice-territorio/sentenze-sul-governo-del-territorio/corte-costituzionale-sentenza-5-dicembre-2019-n-254>>.



nated for a ‘public green area and parking lot’; a variant, then, further amended by resolution of the Municipal Council no. 106 of 27.6.2019, which included this variation within a more complex urban plan favoring the redevelopment of the Pisa sports stadium. In relation to these new measures, the appellant then proposed additional grounds to the original appeal, which were in turn taken into consideration by the Regional Administrative Court in the ruling cited here.

The reconstruction of the factual contours of the judicial proceedings is of extreme relevance for understanding the constitutional implications of the case, as is the almost slavish reference made by the administrative judge to the constitutional jurisprudence on religious buildings for the purpose of adjudicating the dispute. Indeed, the consideration of the ‘fact’ and the way in which it is articulated have played a key role in the construction of the motivations as *legally* articulated within the Constitutional Court’s pronouncements on the matter, particularly in the most recent ruling, no. 254/2019.

## *2. Religion and the rest. Jurisprudential coordinates in the administrative evaluation of local interests and urban space*

The analysis of the *legal* part of the Tuscany Regional Administrative Court’s ruling examined here deserves a separate—to say the least—assessment, if only because it is orbited, almost concentrically, by several issues of theoretical import. The court case ended with a full victory for the plaintiff. This victory was further supported by the intervening waiver by the Municipality of Pisa and MIBAC itself to take advantage of the possibility of appealing to the Council of State.<sup>74</sup> The arguments of the Tuscany Regional Administrative Court move along three lines of argumentation, which appear to be, however, facets of a single interpretative prism. They can be summarized as follows.

a) The decisions taken by the Municipal Administration are deficient in terms of the exercise of administrative discretion, especially with reference to the approval of the urban planning variants aimed at allocating the area owned by the Islamic Association for a ‘public green area and parking lot

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<sup>74</sup> Concerning the development of the matter in the municipality, with specific reference to the waiver of appeal to the Council of State, see *Pisa Today* <<https://www.pisatoday.it/cronaca/moschea-comune-rinuncia-ricorso-consiglio-stato-pisa.html>>.

in connection with the redevelopment of the stadium.’ The deficiency is seen in the absence of any assessment aimed at comparing and balancing, on the one hand, the need to provide the stadium area to be redeveloped with complementary urban facilities—by initiating more than promptly, among other things, the procedure of expropriation for public use—and, on the other hand, the need for the exercise of freedom of worship by the Muslim community present in the territory of Pisa. A need protected—as also specified by the Constitutional Court in the sequence of judgments 195/1993, 346/2002, 63/2016, 67/2017, 254/2019—by Articles 8 and 19 of the Constitution, Article 10 of the EU Charter of Fundamental Rights and Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

b) The municipal resolutions are assessed as tending to discriminate in relation to the evolving factual contours of the matter under trial. The Municipality and the Superintendence intervened, frustrating the expectations of the Islamic Cultural Association of Pisa subsequent to their consolidation and without any consideration of the additional costs that would have been involved in identifying another site likely to be acquired and where the place of worship could be built. In other words, the Pisa Administration has been willfully deficient in supporting the exercise of religious freedom, as protected by Articles 8 and 19 of the Constitution and according to the indications provided at the time by the Constitutional Court regarding the *positive* meaning of the idea of the secularity of the State (Judgment 203/1989 and in its wake, previously, no. 63 of 2016, no. 508 of 2000, no. 329 of 1997, no. 440 of 1995). Such a *positive* meaning of secularism is meant to be manifested in practice through the support of a pluralistic expression of the religious sentiments of citizens, including through support for the construction of buildings dedicated to worship. The abstract possibility of building a mosque or a cultural center elsewhere does not justify, in short, an exercise of administrative discretion which lacks any reasonable or weighted balancing of the interests at stake. And this particularly so, given the priority of the temporal expectations of the citizens affected by the administrative action. What is more—and here we find a particularly relevant passage that is a kind of harbinger of problematic implications, much like the judgments of the Constitutional Court referred to by the Administrative Court—on the other side, that is, in competition with public interests, there is an interest that is expressly protected by the Constitution. The Administrative Court seems to propose

here an argument already found in the rulings of the Constitutional Court, also reiterated in ruling no. 254/2019. Namely, religious freedom is one of the constitutionally guaranteed prerogatives and is endowed with a kind of primacy or centrality over at least some other constitutional rights. I will address the most recent judicial arguments on legitimacy and merit in the field of religious freedom further on. For the moment I will only suggest that placing the protection of religious freedom on a pedestal without questioning the projections of religion within the civil sphere—not to mention the entire network of semantic and pragmatic implications underlying legal subjectivity—risks turning into a paradox: the limitation of the actual religious interests of citizens, especially those of minority faiths. This assertion can be immediately supported; in the shadow of the declared primacy of religious freedom, dangerously ethnocentric processes of reification can germinate; the way religion and its aspects of constitutional relevance are conceived. One manifestation is the decidedly naïve approach, manifested by both constitutional courts and other jurisdictions, in their treatment of the category ‘place of worship.’<sup>75</sup>

Just to be clear, a Catholic church, a Buddhist shrine and a mosque or other Islamic religious gathering place are not *different names* for the *same external reality*. The semantic spectrum and pragmatic-spatial implications of these buildings are different and, more importantly, they exist within urban spaces that are already semantized by historical processes in very incisive but different ways over time. A Catholic church in Islamabad does not have the same symbolic, communicative and pragmatic-spatial implications as in Rome; symmetrically, a Buddhist temple in the center of Dublin *has a different meaning* if compared to a Catholic church in the center of the same city. The examples could continue ad infinitum. I think the underlying problem, however, stands out quite sharply. What may per-

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<sup>75</sup> As Elisa Olivito observes in her insightful essay, E. OLIVITO, *Il fatto nel giudizio sulle leggi*, in *Rivista del Gruppo di Pisa*, 2017/1, “constitutional judges resort, that is, to axioms ‘founded nowhere other than in opinion and common knowledge’ (translation mine) – and in so saying, recalling R. BIN, *Atti normativi e norme programmatiche*, Giuffrè, Milan, 1988, p. 61. The problem, in terms of equality, is that what is ‘common’ corresponds to the opinion and common knowledge of natives or of judging subjects totally unprepared to interpret cultural Otherness and the *objective world* produced by it. In other words, in filling the category ‘place of worship’ with elements corresponding only to indigenous experience (or, worse, with only superficial knowledge of other experiences shaped and projected from an uncritical assumption of the former, itself chosen as a parameter for qualifying phenomena) judges risk misrepresenting the facts and ignoring aspects of them that are potentially relevant with respect to the semantic basin of the law. To these issues, however, I will return at greater length below.

haps not be as readily apparent concerns the sense and pragmatic-spatial implications (which are then two sides of the same coin) of religion and the subsequent impact on the determination of the profiles of legal relevance of what is identified as a house of worship or, more broadly, what counts as the exercise of religious freedom. This is also because people from Western cultures are accustomed to a secularization that emerged from Christianity, and as a result they tend to treat the terms 'religion' and 'denomination' as synonymous.<sup>76</sup> This overlapping suffers, however, from a twofold historical-epistemological deficiency, which makes it both politically and cognitively inappropriate and a source of profound inconsistencies on the constitutional level as well. The apparent indistinguishability of confessional aspects from the anthropological aspects associated with religious attitudes and knowledge is an effect of the processes of cultural and political secularization that germinated historically in the West. Moreover, precisely because they matured within this cultural area, these processes correspond to universes of discourse, to categorical landscapes, that are strongly marked by Christianity and its cultural paradigms. To treat the pragmatic implications of a non-Christian 'house of worship' as if the underlying idea of religion were analogous to that of a Christian religion, or further still, to Catholicism in the Italian context, is to commit an error of perspective that is fraught with discriminatory consequences. To locate a place of worship of another religion within a city is to insert it into a *semantic-pragmatic grid*, that is, into a space that has already been semantized by an encyclopedia of horizons of possibility, independent of the symbolic, communicative, and practical implications of the new building. These implications go far beyond its building perimeter because they travel on the shoulders of the people, the faithful, who are also subjects of law. These mobile and autonomous individuals will indigenize the urban space surrounding the religious building according to their own patterns of action, their own 'cognitive clothing', their own ways of giving it meaning.

In extolling the *primacy* of religious freedom, the Tuscany Regional Administrative Court, like the Constitutional Court and other jurisdictions recently called upon to rule on the issue of houses of worship, seems

<sup>76</sup> This is evidenced also by the difficulty encountered when minority religions turn to the state to regulate their legal role and position. The important differences that exist (on the theological and structural levels) emerge moreover, even when requests for recognition are made by communities and their representatives 'only' with reference to the associative dimension referable to Articles 19 and 20 const., see F. ALICINO, *The Place of Minority Religions and the Strategy of Major Denominations. The Case of Italy*, in *Rivista AIC*, 2, 2017, p. 9 ff.

to adopt a reductionist empirical view of the building and place of worship. The view of the Court appears rather indifferent to the changing significance of the relationship between space and place of worship given the different universes of discourse of religions and cultures. The object *out there*, the place of worship, if transported into normative language without any phenomenal analysis of an experience marked by cognitive/cultural diversity—and thus based on an effort of translation and categorical transaction—risks becoming a purely aprioristic and ideological petition disguised as factual objectivity, a falsely neutral record of existence based on *incontrovertible and universal factual evidence*. In short, a purely metaphysical assumption remains utterly blind to its implications of meaning for personal actions and, therefore, oblivious to the constitutional relevance of the experiences of subjects of law that are passed off as neutral facts.

In its censure of the decisions adopted by the Municipality of Pisa, the Regional Administrative Court, once again drawing on similar considerations developed by the Constitutional Court with reference to the Lombard regional legislation, protested that the administration did not evaluate, along with the other interests, the protection of religious freedom, specifically its right to benefit from the establishment of places of worship. However, the *other* interests at stake in the management of the land and urban facilities are likewise endowed with constitutional relevance. Assuming they should yield to religious freedom would constitute an axiomatic assumption that fails to take into account the relational significance of all constitutional values. As I will clarify further on, I am not referring here to the traditional way of thinking about balancing techniques, which are based in turn on the epistemological and ontological assumptions underlying the so-called *legal topic*.<sup>77</sup> The meaning of the values/purposes inscribed in the constitution, as well as of the semantic spectra of the provisions that house their normative configuration, is neither indifferent to nor immune from the balancing operations of their practical implications, to be carried out on a case-by-case basis. This view is based on an ontologizing conception of constitutional values and purposes<sup>78</sup> that fails to consider the reticular character of all meaning and the circular relationship that exists between the axiological, normative, and factual dimensions. Through hermeneutic processes, the progressive integration of the symbolic dimension

<sup>77</sup> T. VIEWEGH, *Topica e giurisprudenza*, Giuffrè, Milan, 1962.

<sup>78</sup> A conception philosophically relatable to its phenomenological articulations: see, for a genealogy of phenomenologically inspired axiology, M. SCHELER, *Il formalismo nell'etica e l'etica materiale dei valori*, Bompiani, Milano 2013; N. HARTMANN, *Etica. II. Assiologia dei costumi*, Guida, Napoli, 1970.

with the factual one produces a continuous remodeling of the categorical boundaries of values, as well as of the descriptive components of constitutional propositions. This reshaping proceeds systematically but reaffirms the unity or stability of the order by means of progressive updates.<sup>79</sup> Contrary to what is typically argued, these are not rhetorical operations but rather lexical/cognitive ones.<sup>80</sup> In any operation of the so-called subsumption of facts in the sphere of constitutional values and ends, these serve as horizons of signification and thus as instruments of semantic selection, which by aggregating or expunging from their spectrum of implications certain factual situations, effectively modify the set of means chosen for their realization, or attainment. When the operation concludes, the means/ends dialectic is transformed into the semantic-categorical structure of any value or end.<sup>81</sup> The ends and their symbolic counterparts thus define the

<sup>79</sup> From a philosophical and semiotic perspective, this idea of pervasive relationality can be traced back to Gilles Deleuze, G. DELEUZE *The Logic of Sense*, C. V. BOUNDAS (ed), M. LESTER, C. STIVALE (trans), Columbia University Press, New York, 1993; G. DELEUZE, F. GUATTARI, *Anti-Oedipus. Capitalism and Schizophrenia*, R. HURLEY, M. SEEM, H.R. LANE (trans), University of Minnesota Press, Minneapolis, 1983; T. A. SEBEOK, *Global Semiotics*, Indiana University Press, Bloomington, 2001; in this regard, M. RICCA, *Perpetually Astride Eden's Boundaries: The Limits to the 'Limits of Law' and the Semiotic Inconsistency of 'Legal Enclosures'* in *Int J Semiot Law* 35, 179-229 (2022), <<https://doi.org/10.1007/s11196-020-09771-0>>; ID., *How to Undo (and Redo) Words with Facts: A Semio-enactivist Approach to Law, Space and Experience*, in *Int J Semiot Law* (2022) <<https://doi.org/10.1007/s11196-022-09912-7>>. In the Italian constitutionalist landscape, the relational and transformative view I follow finds resonances, at least in its concrete outcomes, in the balancing approach advocated by A. MORRONE, *'Diritti contro diritti', nella giurisprudenza della Corte costituzionale*, in L. CALIFANO (ed), *Corte costituzionale e diritti fondamentali*, Giappichelli, Turin, 2004, pp. 89-107.

<sup>80</sup> On the implications of the cognitive dimension or understanding and determining values and ends, from a semiotic-pragmatist and enactivist perspective, I refer to Mario Ricca's more recent publications, specifically *How to Undo* cit.; and, from the psycho-cognitive and philosophical perspectives, respectively: E. A. DI PAOLO, H. DE JAEGHER, E. C. CUFFARI, *Linguistic Bodies: The Continuity between Life and Language*, The MIT Press, Cambridge, MA – London, 2018; E.A. DI PAOLO, *Enactive Becoming*, in *Phenomenology and the Cognitive Sciences*, 20, 2020, p. 783 ss.; E.A. DI PAOLO, H. DE JAEGHER, *Enactive Ethics: Difference Becoming Participation*, in *Topoi*, 41, 2022, p. 241 ss. <<https://doi.org/10.1007/s11245-021-09766-x>>; and, from a philosophical and legal philosophy point of view, J. DEWEY, *Qualitative Thought in Philosophy and Civilization*, Minton, Balch & Company, New York, 1931, p. 93-116.; ID., *Logical Method and Law*, in *The Philosophical Review*, 6, 1924, p. 560 ff. I refer also to M.L. VÁZQUEZ, *Secularisms, Religions, and Law: A Legal-Cultural Inquiry*, Torri del Vento, Palermo, 2019, esp. p. 97 ff.

<sup>81</sup> For a theoretical analysis of the overlap between the ends/means pair and the category/lists controlling their constituent elements, also related to Peircean semiotics, as well as the conceptualization of marriage offered by St. Thomas, I refer to M. RICCA, *Perpetually*

perimeter of the form and the means, the elements that make up the checklist of each category. A similar argument, moreover, could be made for the descriptive categories included in normative provisions. And this insofar as there is no categorical structure immune to genetic elaboration according to axiological/teleological standards in the determination of what goes in, or what stays outside of it. The set of constitutional provisions expressing values/purposes represents a relationally connected web, where each balancing operation reshapes the underlying semiotic network of meaning and its continuous reframing.<sup>82</sup>

Admitting that religious freedom is dependent on the anthropological-lexical articulations of different religious experiences and their corresponding pragmatic-spatial projections implies a rearticulation of semantic relations between the categorical spectra of values and ends. Thus, from this point of view, it is not possible to establish a priori that religion is unrelated to the protection of health, housing conditions, modes of nutrition, clothing, the time and space allocated to accommodate work activities, and even sports and free time. The distinctions between religious experience, homes, modes of dress, and food consumption can only be made after sounding out how religious discourse, in its anthropological scope, includes and excludes these dimensions. Completing such operations by engaging a distinction—which is, moreover, *fictitious* from both cognitive and axiological-cultural perspectives—between the secular and religious spheres as shaped by Western secularization with respect to Christianity, is utterly misleading and can produce a heterogenesis of ends. The *rest*, in short, on the basis of which the municipality failed to balance the need for a place of worship for the Islamic community in Pisa, is by no means separate from religion, and more specifically from the Islamic religion. It is also for this reason that the aprioristic emphasis placed by the TAR and recent constitutional jurisprudence on the protection of religious freedom, understood as a super-primary value and assisted by differentiated protection, runs the risk—as I will try to show in what follows—of backfiring on the manifestation of individual religious faiths. The single gesture, the single object, may turn out to be transversal with respect to different axi-

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*Astride, cit.*

<sup>82</sup> J. DEWEY, *Qualitative thought*, cit. For Peircean ascendancies and their legal articulation of this reading of categorization, see R. KEVELSON, *Peirce and the Mark of Gryphon*, St. Martin's Press, New York, 1999; ID., *Peirce's esthetics of freedom: Possibility, complexity, and emergent value*, New York, 1993. On the relationship between categorization and values with specific regard to the experience of Western secularization, M.L. VAZQUEZ, *Secularisms* cit.

ological and teleological horizons and, for this very reason, also capable of rearticulating its relations of meaning in overall terms, causing it to unveil new implications and, therefore, new semantic perimeters. It is not possible to establish all this a priori except by denying the dynamic meaning of socio-cultural pluralism at its root. The adoption of an ontologizing perspective on values and meanings conceals, in effect, a communitarian approach, which already in the constitutional debates of the early twentieth century took shape as a polarization between bourgeois-based classifications and the requalification of subjectivity in a democratic-pluralist social world<sup>83</sup>. Establishing, as a result, what is discriminatory and what is not can certainly involve procedural issues in and of themselves, that is, the absence of an adequate comparative and relational analysis of the different interests at stake. This means that the relevant pragmatic-spatial projections of those interests and their corresponding legal relevance with respect to the semantic potentialities of the system must be analyzed semantically, considered equitably, and sifted through a process of axiological relational balancing. However, it is impossible to specify the substantive terms of discrimination except by completing a preventative process of translation and transaction between the meaning conferred on the *facts* of the specific religious manifestation, on the one hand, and the relational tracings between the different constitutional values and purposes triggered by the outcomes of that hermeneutic operation with respect to the semantic texture of the concrete case on the other.

In the case of the Pisa Mosque, the issue unfolds as follows. The TAR's censures regarding discrimination should not have been counterbalanced only by an abstract measurement of religious freedom and other interests (possibly also vested with constitutional importance). Instead, those censures should have first reconstructed the existing relationship between the meaning of the Islamic place of worship, to be determined to the maximum extent of its pragmatic-spatial implications and projections, and the perennially changing tapestry of relations between urban spaces and *other* interests. There is no mention of any of this in the judgment considered here, in contrast to the constitutional pronouncements from which the Tuscany Regional Administrative Court draws inspiration. The level of

<sup>83</sup> In this regard, the clash between Kelsen and Heller in the constituent phase of the Weimar Republic remains emblematic. I refer to D. DYZENHAUS, *Legality and Legitimacy. Carl Schmitt, Hans Kelsen and Hermann Heller in Weimar*, Oxford University Press, Oxford, 1999.; even beyond that the clash between Kelsen and Schmitt, translated into English by L. VINX, *The Guardian of the Constitution: Hans Kelsen and Carl Schmitt on the Limits of Constitutional Law*, Cambridge University Press, Cambridge, 2015.



administrative scrutiny of the facts in the name of justice is here, it must be said, more penetrating and far reaching than that of a constitutional legitimacy trial. Despite the investigative competence of the Constitutional Court<sup>84</sup> and the ever-increasing importance assumed by factual elements in determining both the potential unconstitutionality of legal norms and the active interpretation of constitutional norms and their semantic-pragmatic projections, there is no doubt that the TAR could have better specified its position on *religious diversity* by focusing its censures on the absence of balancing in the work of the municipal administration. Nonetheless—as I hope to be able to better highlight later—the constitutional jurisdiction in the matter of places of worship stands out as a kind of paradigmatic case of the importance that the consideration of factual contexts, namely the semiotic-spatial network co-extensive with the normative situation brought before the court, possesses in the articulation of the judgment of illegitimacy of legislative norms.

c) The third aspect of my grounds for censure of the Administration's actions in the matter at hand concerns the *timing* of the interventions made by the Authority. The Regional Administrative Court points out how the overall conduct adopted by the Administration is contradictory, intentionally indeterminate and, in the final analysis, aimed at frustrating any possibility for the Islamic Association of Pisa to remedy any issues of incompatibility in their building request with respect to the public interest. In a nutshell, the Regional Administrative Tribunal points the finger at an administrative conduct characterized as 'unreasonably dilatory' and, therefore, essentially 'obstructive.'

Examining the three concerns highlighted in points a, b and c, it emerges with relative coherence that the hermeneutic context used by the TAR in qualifying the conduct of the municipality lies well beyond the explicit boundaries of both the consideration of the *facts* and of the *law* in the ruling. At issue is the climate of widespread intolerance of the Islamic presence in Italy and, even more so, the strong resistance manifested by large segments of the population in many cities, regarding the building of mosques in urban centers rather than in suburban areas. I make this point

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<sup>84</sup> Regarding the investigative powers of the Court, I refer to T. GROPPi, *I poteri istruttori della corte costituzionale nel giudizio sulle leggi*, Giuffrè, Milan, 1997; and more recently, E. OLIVITO, *I poteri istruttori della Corte costituzionale: conoscenza della prassi applicativa della legge o preannuncio di un monito, in anticipo su Strasburgo?*, in *Nomos*, 2-2021.

because in the absence of this sort of pre-interpretive framework, which I would call *affective*<sup>85</sup>, the conduct of the city administration would probably not have met with such harsh censure. In using the term *affective* I am referring, in a technical way, to the qualitative elements that operate in the determination of the context and the set of elements that make up the factual situation and are used in the process of categorizing and then legally qualifying the *fact* when constructing the judicial syllogism. Including or excluding something from the categories used in the determination of the *fact* strongly influences the determination of the profiles of legal relevance and thus the norms to be called upon in determining the subject matter of the judgment. However, the decision about what to include and what to exclude from this factual categorization process is guided by values and ends, that is, by qualitative and aesthetic elements. Legal values and ends, embedded in the structure of the legal system, can also be in opposition to these values and ends. The result is that the process of factual categorization, as it determines the issues of legislative and constitutional relevance through progressive dialectical steps, can produce an effect of semantic circularity. This means that the identification, for example, of a profile of constitutional relevance may prompt the interpreter to include (or exclude) certain factual elements and their semantic indices from the categorization on which the final construction of the judicial syllogism will be based. But the inclusion or exclusion of certain profiles may call into question, in a sequence of semantic-hermeneutic adjustments, other legislative and constitutional profiles, which in turn will react to the relational signification of those that are already involved in the fact categorization/interpretation process. Paradoxical as it may seem, at the end of the journey the *fact* itself, in its empirical determination, may become something other than what was hypothesized at the beginning of the whole interpretive/applicative process. In this transformation, moreover, the semantic spectrum of constitutional values and purposes will also be involved since there are always previously unseen and unpracticed modes of mutual relations present.

The observations just made serve to justify the following conclusion: what is *ultimately* described in the motivating part of judicial pronounce-

<sup>85</sup> I emphasize that here the term 'affective' has a cognitive valence and concerns the implication of qualitative elements that are subject to embodiment processes that, as such, guide the world-categorizing activity produced by the human mind. To be clear, *affective* does not mean merely sentimental or emotional, understood in their opposition to rationality. Rather, *affectivity* is a constitutive ingredient of the communicative processes that lead to the generation of language capable of operating intersubjectively and, therefore, of producing shared meanings which only then might possibly be regarded as 'objective.'

ments as the *fact*, is *by no means* a self-evident *fact* but rather the result of an operation of *semantic construction*. At this point I would like to apply the brief theoretical-hermeneutical trajectory just highlighted to the case at hand, and to this end I propose a counterfactual hypothesis: among the elements in contestation for the ‘land’ were, on the one hand, interest in the construction of a Catholic church and on the other, the need to provide the ‘city stadium’ with an *appropriate* facility—a likely response to the Pisa soccer team’s promotion to the top league (Seria A). Despite the influence of local clerical powers, often denounced by militant atheists, and having learned to appreciate—as an American living in Italy—the depth of the political importance of soccer for Italians, I am almost certain that a setting aside of religious interests would have been easily tolerated and, perhaps, not so much attention would have been paid when balancing the interests at stake.

Undoubtedly, it could be postulated that in the case of a Catholic house of worship the whole affair might well have gone a different way, that the city administration would have taken a more dialogical and open-to-negotiation attitude from the beginning. Unfortunately, there is no counterevidence on hand. On the contrary, it appears easily verifiable that the political-anthropological conditions in Italy today, especially regarding the phenomenon of migration and the increased diffusion of faiths that until recently were considered *exotic*, turn out to be relevant in the exercise and outcomes of jurisdictions of merit and legitimacy of every degree. This was also true in the case examined here, so that the factual situation, or better yet, its wide-ranging implications with respect to the overall context of the judicial case, undoubtedly influenced the qualification of the administrative action as invalid—but the same, in my opinion, can be said with respect to the judgments of constitutional legitimacy cited above, especially sentence 254/2019 – and the identification and interpretation of the constitutional parameter and the related profiles of illegitimacy.

Personally, I find all of this well-warranted and indicative of a newly serious effort on the part of the Italian judiciary to curb an increasingly rampant discriminatory attitude and, unfortunately, one often taken on for reasons of pure electoral convenience by political parties and legislative bodies themselves, both nationally and regionally. Discrimination, however, cannot be evaluated on the basis of preconceived factual presumptions and in many cases based on a kind of ‘common knowledge.’ This attitude can work—even if not terribly well—in a society that is presumed

to be *static* in the dynamics that accompany experience and meanings, socio-communicative evolution and language. In situations of postulated cultural stagnation, the element of translation and construction implicit in the construction of the judicial syllogism<sup>86</sup> may even go unnoticed. It is, however, an omission that does not in any way correspond to the actual cognitive process involved in the work of interpreting and applying normative statements with reference to concrete legal cases. The events that take place in social life do not come with labels. When a client seeks assistance from a lawyer or a notary, or a specific situation comes before a judge, the client does not present themselves already bearing the indices of correspondence to pre-established and mechanically applicable normative schemes. The interpreter-jurist will have to decide *what to see*, and in so doing, will end up almost retracing the etymological genealogy of the term *facts*. As stated above, it is not enough to assume a generic idea of 'house of worship' or 'religious freedom rights' when faced with the task of deciding *how* and *for what profiles* the assessment carried out by the municipal administration of Pisa and the Superintendence should be guided. They must determine what should be excluded due to its irrationality, abuse of power, or some combination (something more than *balancing* as ordinarily understood) of the different interests and respective profiles of axiological/teleological relevance at stake by the request to build a mosque.

If 'place' denotes the substantive, historically and geographically produced synthesis of the interaction between subject and space, between symbolic and physical dimensions, then who can assert *a priori* that the idea of 'place of worship' expressed in its abstractness, coincides with the network of experiences summarized in the term 'mosque'? I must immediately point out in this regard that a positivist or imperativist/normativist response asserting that the normative scheme encapsulated in the formula 'place of worship' as implicitly codified historically and culturally in Italian national interpretive practice can be considered to be a legally relevant *fact*, would be entirely *misplaced*. All this is in accordance with the Kelsen-derived adage that *law produces its own facts*.<sup>87</sup> Opposing these aprioristic hermeneutic petitions is the multilevel structure of the legal system and the possibility of elaborating the middle term of the judicial syllogism with an activity of translation (as highlighted earlier). To remain blind to the differences that lie in the *experience* of the mosque and the Islamic religion could mean ignoring specific exigencies that may well be worthy of legal

<sup>86</sup> In this sense, see J. DEWEY, *Logical Method and Law*, cit.

<sup>87</sup> H. KELSEN, *General Theory of Law and State*, Routledge, London, 2005 (1944).

protection, including at the constitutional level. All this with the paradoxical effect that underestimating them could lead, through a heterogenesis of ends, to the negation of the presuppositions of legitimacy of the same positivist-imperativist normative options. Kelsen himself, moreover, was perfectly aware of all this, namely that the play of meanings would end up generating a nexus of circularity within the graduated construction of the legal system he hypothesized. And precisely for this reason, during the unfolding of the constitution-making process that led to the Weimar Constitution, he strenuously opposed the inclusion in the constitutional text of rules of principle or substantive propositions of intensely axiological or teleological content.<sup>88</sup> The problem with a constitution orphaned of horizons of meaning, ciphered in axiological-teleological principles or expressions, is that it must presuppose a semantic stability. Instead, today we find ourselves within societies that are not only pluralist but are continually facing culturally and therefore cognitively, as well as axiologically, diverse elements that are conveyed by the processes of globalization of everyday life.

Words such as ‘house of worship,’ or ‘religion,’ cannot be interpreted by taking as prototypes those meanings that have up until now sedimented within legislative and constitutional interpretations and rooted themselves even deeper in the progressive co-implications between the semantic potentialities of constitutional texts, the legislative language and the social dress of each national context. Especially in *civil law* countries, which have a preceptive structure that has been inspired by canons of generality and abstractness (even if from a systemic point of view the observation is also applicable, with a few differences, to *common law countries*), the words of law and, especially those of the constitution, cannot be read in a *vernacular* key. Their interpretation must instead include the new, unprecedented ways in which the *making of facts* interrogates legal language and sets in motion its semantic and axiological components.<sup>89</sup> In the absence of this approach, the universalistic inspiration and, consequently, the entire modern genealogy of the legitimation of the law would be contradicted. Exaggerated communitarianism, if applied to the logic of constitutionalism and its structural universalist matrix, would simply annihilate its legitimacy.

In an attempt to align theory with practice, I will try to connect these last considerations to the case of the Pisa Mosque. To begin, it should be

<sup>88</sup> D. DYZENHAUS, *Legality and Legitimacy*, cit.

<sup>89</sup> In this sense, I concur with the hermeneutic-constitutional approach proposed by F. MODUGNO in, *Interpretazione costituzionale e interpretazione per valori*, in *Costituzionalismo*, it, 8 July 2005.

noted that the frequent amalgamation of mosques and Muslim cultural centers in Italy (as in other European contexts) is not exclusively the result of nomenclature *ploys*, which are nevertheless often adopted by representatives of Islamic communities to circumvent the formalistic extremes of restrictive worship building regulation; this regulation too often sees its legal constraints used instrumentally to limit the manifestations of Muslim religious experience, rather than to respect and assist in its social unfolding. Often in mosques and adjacent cultural centers one can find sports facilities—a phenomenon, incidentally, that also occurs and has always occurred within Catholic parishes. However, the imaginary of secularization, which tends to overlap religion and denomination and to reduce religion to denominational experiences, tends to regard those *collateral* facilities and activities as extraneous to the dimension of worship. The distinction underlying such classificatory judgments, however, cannot be mechanically and uncritically applied to the Muslim world and imaginary. This is because in its religious specificity, this distinction includes numerous aspects of experience of social space that are traditionally considered, instead, *non-pertinent to religion* in urban cartographies rooted in Christian culture and affected by historically specific processes of secularization.<sup>90</sup> In this regard, it could be argued that if we venture beyond those mappings of space fixed in the topographical lexicon of a secularized or self-described secular country (which must include their implicit embedded historical religious experience) we risk eroding the resilience of the principle of neutrality of state and law with respect to different faiths. The crucial issue is that those mappings appear neutral only because public and even legal language incorporate within themselves anthropological-cultural elements that are deeply rooted in the Christian imaginary. I will try to illustrate this point with a few examples.

Consider the inside/outside division, which informs architecture, clothing and other aspects and practices pertaining to personal dignity. In traditionally Christian vs Islamic countries, this division engenders an entirely different topography of social space. The same can be said of temporal arrangements. In the West, no one thinks that treating Sunday

<sup>90</sup> This is due, among other things, to the absence within Islam of a distinction between sacramental power and a regimental power that is, on the other hand, closely related to the speculative theology and ontology proper to Christianity—observing, in this regard, that there are already radical differences between Catholicism and Protestantism precisely because the latter bases its autonomy on the denial of sacramental power in the head of the clergy because of the historical uniqueness of the process of transubstantiation, that is, the transformation of bread into the body of Christ.

as a holiday compromises the *neutrality* of State labor law. Yet, if it were not written in a *certain book* ‘...and on the seventh day he rested,’ and if that passage had not been interpreted in a *certain way* by the Christian tradition, the *obvious normality*, and thus *neutrality*, of Sunday as a public holiday would not be a shared assumption. These remarks only serve to show how religious pluralism cannot be discerned without an awareness of how much implicit Christianity there is in Western institutions. A similar point could be made for other countries that are emerging as secularized such as, for example, India (in relation to Hinduism, Buddhism, Jainism and even Islam) or China (in relation to Confucianism and Daoism). In other words, there is a profound cultural disunity between the lexicon of lived space, and thus also of legal space, experienced by those belonging to Christian denominations and that faced by those belonging to faiths more recently settled in Italy. To apply, in the name of state neutrality and secularism, the distinctions and perimeters of the improper dyad confession/religion to these faiths as well, would mean legitimizing a strategy of silent discrimination, inevitably destined to misrepresent the religious pluralism that is nevertheless defended and proclaimed as a constitutional end by the Constitutional Court through the articulation in a *positive sense* of secularism (Judgments No. 203/1989, 63/2017).

To see some of these observations at play, we need only look at the architectural complexes housing mosques and their annexes in Islamic countries. Quite often, next to the building designated for prayer (somewhat comparable to a Catholic church) there are other building complexes, very often built for solidaristic and charitable purposes coinciding with the theological-moral core of Islam and made financially possible by the creation of pious foundations (*waqf*), typically subsidized through donations from the faithful (e.g., through *zayat*). These ‘building objects’ and the activities they make possible are direct expressions of Islamic worship and faith. That such objects and activities traverse elements of general public interest—at least according to Western-inspired views of secularization—does not detract from their relevance to the genuinely religious Muslim concerns.

After all, the transversality of the manifestations put forth by entities—whether individual or collective—that act as ‘religious agents’ with respect to both denominational and public spheres is increasingly a problem—as lucidly pointed out in a recent text<sup>91</sup>—both in theoretical-normative

<sup>91</sup> With regard to the relationship between general interest and the activity of worship or religion see, G. D’ANGELO *Declinazioni giuridiche del fine di religione e di culto. Dalla forma all’interesse*, Giappichelli, Turin, 2020, where one can also find an in-depth reading and

and practical terms. The legislation on the third sector, as is well known, identifies ecclesiastical entities as recipients of the regulations it dictates only with reference to the activities of public interest carried out by these entities (Art. 5, CTS and Art. 2 of Legislative Decree No. 112/2017), in no case allowing them to adopt the status of third sector entities. On the *contrary*, it is inferred from this provision that activities of religion or worship cannot be considered activities of general interest.<sup>92</sup> The dichotomy between general interest and religion, on the other hand, is maintained despite the approval of law 108/2021, which amended Article 4, paragraph 3, of the Third Sector Code. This *novelty* allows the rules on so-called ETS and social enterprise to be applied with exclusive reference to the 'separate branches' of ecclesiastical entities, branches that are themselves civilly recognized, provided that they carry out the activities of public interest provided for in Art. 5 CTS mentioned above. Although these are not entities differentiated from religious entities, it nevertheless remains the case that the main entity may under no circumstances assume the status of ETS. The legislative innovation just referred to is welcome, but leaves open the dilemma underlying the distinction, assumed almost *ontologically*, between activities of general interest and religious activities. And this is precisely because the activities put in place by religious entities but offered as general interest are numerous—as, moreover, became clear during the pandemic, when the relief and solidarity activities offered by members of multiple religious communities, even those without any State recognition, proved

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an astute identification of the inherent limits to the motivation of ruling 254/2019 and the defective consequences it implies for freedom. This critical approach is an exception in the Italian hermeneutical landscape concerning this ruling. This joins the observations long developed by M. RICCA, see, *Art. 19*, in *La Costituzione italiana*, UTET, Turin, 2007, 420 ff.; ID., *Pantheon: Agenda della laicità interculturale*, Palermo, 2012, 119 ff.; ID., *Otherness, Elsewhere, and the 'Ecology' of Law's Implications: The semiotic oceans surrounding legal signification and its discriminatory exteriority/objectivity* in *International Journal of Legal Discourse* 5(2), 2020, p. 185 ff, the critical reading of the identification of the content of constitutional freedoms with a list of subjective prerogatives configured as 'rights' seems prophetic in light of the rationale recently provided by the U.S. Supreme Court regarding the 'right to abortion.' A quick reading of the Syllabus of the Supreme Court's pronouncement is sufficient to immediately understand the dangers of reducing the freedom recognized by the constitutional language to a 'right.' The U.S. Supreme Court ruling can be accessed [online](#). To the problem of identifying freedom with a right or a list of rights I will, however, return at greater length further on.

<sup>92</sup> In Memorandum no. 3734 of April 15, 2019, the Ministry of Labor and Social Policy ruled that religion or worship activities cannot be counted among those of general interest, nor among the so-called *miscellaneous activities* referred to in Article 6 of the Third Sector Code.



essential to the pursuit of fundamental public interests. A circumstance that then prompted the government to make them the subject of specific involvement and reference, along with ETSs, in the fateful DPCMs issued during the phase of the greatest pandemic emergency, also with regard to access to funding. Without wishing to dwell, here, on the specific extremes of the events related to the pandemic, I have made the reference to the relationship between the third sector and ecclesiastical entities for the sole purpose of emphasizing how it cannot be the abstract qualification of an 'agent subject' that determines whether activities are of 'general interest' or not. This is because it is not possible, in my view, to distinguish the subject from its activities, the former being a kind of presupposition and, at the same time, the summary of them, and thus, as a whole, a synthesis between these two aspects. This consideration applies still more when discussing legal rather than 'natural' persons.

In the case of legal persons, activities and their ends structure their subjectivity, which is artificially generated around the explicit merit of each.<sup>93</sup> Thus, while it is true that the end does not justify the means, nevertheless it is important to highlight how it qualifies them. Still, this represents only one way the meaning of an end is defined, since it is also the synthesis of the means that are mobilized to achieve it. This implies that if the means turn out to be relevant with respect to multiple ends, then their categorization can and must also undergo a recalculation, a reshaping, if only to protect the principle of equality. A consequence of this reshaping may also be the restatement of the distinctions between ends and perhaps the emergence of a third teleological category or inter-categorical perimeter that allows subjects of law to be categorized in a way that avoids unjustified and constitutionally unreasonable distinctions.

Beyond the apparent technicality and specificity of the considerations concerning the legal personality of religious bodies and their subjectivity with respect to the interests they realize through the elaboration of their activities, it must be said that the categorization problems now examined present themselves quite similarly with reference to buildings of worship, to the activities of worship, to the distinction or co-implication between religious interests and *other public interests*: that is, what I have identified

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<sup>93</sup> In this sense, for some theoretical discussion related to the legal personality of so-called *avatars* and their parallels with certain theological-canonical *inventions* (e.g., the legal recognition of the so-called 'provisions for the soul'), I refer to M.L. VAZQUEZ, *Digital Personhood, Time, Religion. The Right to Be Forgotten and the Legal Implications of the Soul/Body Debate*, in *Calumet - Intercultural Law and Humanities Review*, 10/2020, 165-188 and *ibid.* for further bibliographical guidance on the general topic of 'legal personhood.'

in the title of this section as *the rest* with respect to religion. That *rest* can potentially also be part of religion because it is inseparable from the relational fabric from which the category 'houses of worship' and thus its representation in objective, *factual* terms, that is, distinct from the subjective aspect, is extracted. The house of worship, considered in its *objectivity* that is, as an entity placed outside of subjective or axiological qualifications, as a factual empirical reality on which to exercise legal qualifications, is already a concentrate of relationships and cognitive/cultural qualifications. The term *place of worship*—as repeatedly emphasized—summarizes these places while simultaneously concealing them behind the apparent facade of dazzling *objectivity*. Nevertheless, that *place*, precisely, is already the synthesis of a qualifying relationship between subject and object; a relationship inscribed in the history of Christianity and secularization, of the distinction between internal and external forum, between ritual-sacramental moments and the theological-moral, and therefore political, dimension of religious experience. This set of distinctions pertains, in its apparent obviousness, to the Western eye, specifically to the Christian tradition and the cognitive imprint it has left on the categorical apparatuses of Western experience, which also claim to be universal and therefore secular/rational, neutral. The fact that this historical imprint *is not recognized as such* in the common and legal language of Italy—taken as one example among many—does not diminish its co-implication with the anthropological projections of the Christian religion. The *place of worship*, if concerning the experience of another religion—in the case of the Pisa Mosque, Islam—should then be considered *out of place*, that is, at best the result of a recalculation of relations with the *space* that it summarizes, and of whose semantic articulations it is a holistic experiential *summa*. That space is the same space that the epistemology of secularization defines as *secular, neutral*, the result of representations guided by reason and, indeed, not by subjective values or faith. This is the same epistemological view that in the name of freedom distinguishes the internal from the external forum and connotes the legal experience of modernity on the basis of the crucial characteristic of *externality*. Only by placing the mosque *outside that place* and re-shaping it to a redefinition of the intersections between religion and the public sphere, between religious interests and public interests, between subjectivity and the mode of semantic mapping of the common space, will it be possible to *make room for* the Islamic religion and the profiles of constitutional or human rights relevance that its *particular way of manifesting* religious activ-

ity and experience projects into the social field<sup>94</sup> .

In the absence of the semantic re-mapping operation just described, any proposal for balancing religion and other constitutional values, conducted against an already categorized and mapped spatial background, will be distorted and potentially mystifying and discriminatory. And it will be so simply because that space, and thus also the *objective places* that populate it, will already include mappings produced by the logic of *Christian secularization* and its influence on the classification of what is rational and what is religious.

To further demonstrate what I mean, I would like to offer a rereading of the Pisa affair in light of an issue brought to the forefront by the pandemic. I am referring, specifically, to the relationship between religion and health. Setting aside the mass of writings concerning the exercise of worship and the limitations posed by the health restrictions related to the lockdown resulting from the COVID virus, I would like to propose a narrative substitution concerning the court case examined here. Imagine that instead of the Pisa stadium, the modernization and redevelopment work had involved a hospital. The balancing and, at the same time, the dialectic between values would have featured on the one hand religious freedom and on the other the right to health enshrined in Constitutional Article 32. Looking at the issue from a modern perspective, health has nothing to do with religion. It is a secular issue and should be approached with scientific and positivist-empiricist or, perhaps, reductionist criteria. Yet, to think that health protection stands in contrast to the Islamic religion would be

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<sup>94</sup> In this regard, the parallel with the ‘Casa Sollievo della Sofferenza,’ founded by Padre Pio in S. Giovanni Rotondo, recognized as a non-profit religious foundation by Presidential Decree 14/1971 and defined as a ‘classified religious hospital,’ is interesting. The relationship between the hospital structure, the religious purpose it embodies, and the territory of S. Giovanni Rotondo can be said to be one of mutual implication and development. In some respects, the religious imprint on the territory, its projection and prolongation in the public interest, and the coordination with the dynamics of the lived space of the municipality of S. Giovanni Rotondo appear inseparable today. A *local* space that through the interpenetration of religion and healthcare has seen its semantics rewritten in relation to a network of projections of meaning that cross the topographical boundaries of the town and articulate its meaning as an outcome of the relationships interlaced with national and global dimensions. Today, streams of activity to and from S. Giovanni Rotondo converge and depart, and these shape the meaning of that place in relation to its connections with countless *elsewheres*. These connections, in turn, are transfigured into modes of manifestation of the public interest, as well as the religious interest, in many ways making inseparable the protection of the *rest*, that is, of the other public interests with respect to religion and the equally public-constitutional protection of religious freedom and its expressions (C. const. 95/1993, 63/2016).

a gross error. An error that would end up affecting the very ways in which Muslim concerns are balanced and directly involved in public choices. Any human being is also a *potential sick person*. The need for the protection of human health is among the activities directly implicated by the dogmatic of solidarity that serves as the theological-moral axis, if it can be so called, of Islam.

Imagine, at this point, that the municipality of Pisa had intended to frustrate the legitimate expectations of the Islamic Cultural Association of Pisa because of the need to build a hospital facility, or its necessary annexes, in the area previously designated for worship. The balancing and eventual negotiation with the religious community that holds the legitimate interest in the construction of the mosque could, and should, be conducted taking into account the internal tension within the Islamic religious perspective itself between the need to ensure ritual worship and the need to guarantee the life and health of the faithful—and, for theological reasons, not only of those belonging to Islam. If the municipal administration—in this hypothetical eventuality—acted by taking an inclusive attitude and valuing the civic implications of the Islamic faith, for example by providing a public recognition endowed with political-symbolic value to the local Muslim community regarding the realization of the hospital facility—the religion/health dialectic could probably be resolved through a *dissolution* of the potential conflict *inscribed in things* rather than through its balanced solution based on supposed criteria of proportionality or margins of appreciation (according to the rhetorical paraphernalia accompanying the theory of balancing constitutional principles and/or values). Furthermore, instead of applying the merely technical 'expropriation for public use' regulation and abandoning the Association to solve the problem of acquiring another buildable location for a house of worship on its own, the Municipality could take an active part in finding a new place, including through the application of urban planning instruments and possible financial support justified by the sacrifice imposed on the Islamic Cultural Association by the denial. To emerge re-formed from an operation of this tenor could support—hypothetically—both the religion and health categories, considered in their mutual relations, something that also extends to their axiological component. In this way, rather than *balancing*, one would have to speak of a *mutual transformation* of the semantic/spatial spectrum of constitutional values/principles as the outcome of a recalculation of the relations underlying the categorical perimeters of 'health' and 'religion' with respect to the *space of social experience* subject to legal qualification. From this

same perspective, the co-extensiveness between experiential/social space and semantic/categorical space would also emerge. This concurrence is of total relevance to law since each categorical frame encapsulates a circuit of experience imbued with spatial projections and, in some ways, symmetrical to them.<sup>95</sup>

I do not intend with this hypothetical example to say that ‘health’ and ‘religion’ are indistinguishable, or that everything is religion or nothing is, but rather that the reciprocal distinctions between them could and should operate towards an activity of reconfiguring their respective relationships and areas of overlap between their respective semantic-pragmatic projections. Thus, to return to the hypothetical example, the *Islamic place of worship*, the mosque, would be repositioned within the urban fabric in a renewed way, and according to the implications that the Muslim religious experience would project onto the plane of public interests related to the protection of health and the related *urban space* it requires. The polarity between the house of worship and the hospital, therefore, could be *dissolved* rather than *balanced*<sup>96</sup> also because a failure to protect health would reverberate, within the Islamic imaginary itself, creating a conflict between the principles of solidarity and sacredness of human life, on the one hand, and ritual practices, on the other. A similar discourse, moreover, would be applicable the laic/secular level of constitutional values because the imperatives of health protection would be articulated along a direction of continuity and inter-penetration that would fully *value/increase* both, rather than according to a nexus of dialectical antithesis with respect to religious freedom. However, without a work of translation and transaction between the semantic-spatial landscapes and with a view to a categorical *remodeling of places*, it would be impossible to harmoniously recompose, and in a balanced way as even the administrative norms would have it, the excess, the foreignness, the *being out of place* of the mosque. A being *out of place* that nevertheless would be—and in any case is—the result of its intrinsic signification, and which is such only with respect to pre-existing

<sup>95</sup> On the co-implication between category and space I refer to M. RICCA, *Sussidiarietà orizzontale* cit.; M.L. VAZQUEZ, *End of Secular City Limits?* cit.

<sup>96</sup> In the *common-law* circuit of experience, we can find a crucial distinction between conflict dissolution through re-categorization vs. balancing that leaves the categorical boundaries of the values or normative categories at stake unchanged. The former we can call *adjustment*, while the latter is better understood as *accommodation*. For an illustration of the difference, with specific reference to the relationship between law and space, see D. DELANEY, *The Spatial, the Legal and the Pragmatics of World-Making. Nomospheric Investigations*, Routledge, Abingdon-New York, 2010, p. 163 ff., and esp. p. 172.

semantic-spatial and categorical articulations, but not for this reason inherently worthy of an a priori or tacit protection.

More generally, the interrelationship and inter-subjectivity regenerated by the process of translation, which etymologically speaking directly recalls the transposition of and through space (lat. *trans-ducere*), rewrites the coordinates of objectification of space by revealing how *objectivity* is a result of intersubjectivity and its processes of discursive shaping of the so-called external world. This external world is nothing but the synthesis of 'inside' and 'outside,' the achieved communicative convergence between multiple subjective projections on the plane of experience. More succinctly, the objectivity of the categories used to describe the objective world, the *out there*, is a cultural product whose *appearance as a given* is nothing more than an outcome, a side effect of the concealment of the cultural (and therefore also anthropological-religious) component of its generation. A concealment that the eruption of diversity in the public arena requires us to relativize through the reactivation of processes of signification and axiological convergence/transaction—as described above.

The considerations just outlined, which in themselves may perhaps appear distant from the affairs of daily life by which legal discourse is measured, reveal instead an intimate connection with the common-sense public debate. Reading the media reports regarding the Pisa Mosque affair makes it immediately clear how the absence of re-categorization processes geared toward highlighting the constitutional profiles of the situation experienced and the related dynamics of the relationship between the sociocultural values at stake has risked and continues to risk engendering bitter conflict. Political instrumentalization, in the basest sense of the term, is ready to pounce on the nuggets of misunderstanding underlying these conflicts in order to exploit the possible polarization of popular consensus. The oppositional pairing of 'the mosque vs the stadium' has undoubtedly come to haunt the city's imagination, thus enabling the city administration to present itself as a defeated hero in its attempt to satisfy the need of the *many* over the interest of the *few* (Muslims)—as if Muslims, by definition, cannot also be soccer fans! In this respect, it matters little that the long shadow of constitutional justice has been cast over the jurisprudential resolution of the case at hand. The articulation of the parameter of universality/general interest made by the Constitutional Court and subsequently by the TAR bases the 'protection worthiness' of individual instances on the synthesis of values that are embodied by a legal subjectivity that is understood as a whole, rather than on the mere numerical consistency of factions and

their contingent interests—about this there can be no doubt. However, the legal process can do nothing to foil *struggles for space* if it is not nourished, in its argumentative approach, by the results of a *translation activity* that does not segregate one of the values at stake—in this case, religious freedom—in the straits of a polarization between religion and sport that does not actually exist on the cultural and axiological level. Protecting the Islamic faith by placing it within the symbolic fortress of an axiologically protected area, categorically distinct and spatially isolated from the rest of the constitutionally guaranteed and distributed interests in social action, risks turning the *place of worship* into an enclosure. An enclosure perceived by *the rest* of the population and with respect to the *rest of* the corresponding interests also deserving of protection as an island where a victorious minority can entrench itself with the help of judicial institutions.

The incompatibility between the semantic-spatial projections of the place of worship and the *rest of* the social spaces, in a communicative situation of this tenor generated by discursive and translational deficits, is in clear evidence in the atmosphere of war, of mutual rejection of the *adjacencies of the place of worship*—whose actual signification is entirely misunderstood by the remaining secular population or those of a different faith. The *common sense* that animates the strategies of rejection of otherness, of the religion of *others*, deployed by the native population in many junctures concerning the construction of mosques in Italy today, beyond the narrowness of some of its manifestations, seems to be capable of grasping very lucidly—more so than the institutional and academic discourse—the importance of the *adjacencies* of places of worship and thus the relational significance of their presence in *urban space*. When the news reports of celebrations labeled as ‘pig day,’ of clandestine deposits of pig heads in mosques, of practices of sprinkling the ground designated for the construction of Muslim houses of worship with pork fat by the local population, common sense proves that it is not a mere collection of essences and stereotypes but rather a faculty of understanding and adaptation that is continually active. Unlike the jurists with their classifications, distinctions and essentializations, the populace, the common people, though animated by discriminatory inclinations and intolerance, demonstrate a perfect understanding that the *place of worship* is not dissociable from the space that surrounds it and its relations with the other elements, agents and factors that populate it. The meaning of a mosque encompasses *its spatial consequences*, that is,—as etymology again prescribes—the pragmatic projections of *liturgy* (from the Greek *lithos*, stone, and *ergon*, action), which

metaphorically indicate in their combination acting in a paved space, that is, in the square, in the open air.<sup>97</sup> After all, it is common experience that places of worship, both as axes of dissemination of ortho-praxis and in strictly architectural terms, draw around themselves a kind of urban and pragmatic-cultural *mantle*. Where a mosque stands, the surrounding space of a Western city inevitably changes. One thinks, bearing in mind Islamic food dictates, of the curve of future earnings that lies ahead for an Italian delicatessen located near a new mosque, or perhaps, a wine shop, and so on.

Indeed, in the aftermath of the TAR ruling the news reports in the Pisa newspapers recounted the now defunct plans to redevelop the area where the stadium would have been by building a new shopping mall and parking facilities for city clientele and tourists; plans now called off by the decision to allow for the mosque. In the long run, such narratives and perspectives will end up transfiguring the construction of the mosque into a collective defeat if not accompanied by an effort of intercultural integration for which *common sense* alone will not suffice. To view it as a defeat completely disregards, to name just one example, the possibility that Muslims may also be *soccer fans* and perhaps the circumstance—already alluded to—that a soccer pitch, as happens in many parishes, may one day find its place among the annexes of the planned Islamic cultural center.

Legitimizing the mosque by allowing it to be perceived as a *meteorite* that has crashed on the territory of Pisa thanks to a legal decision does a disservice, in the end, to both religious freedom and to the constitution understood as a palimpsest of social experience and its reproduction through time. Among the prices to be paid could be harmonious processes of integration and social inclusion of the minority communities present in the Pisa area—in this case, the Muslim community—whose *spatial citizenship*, otherwise definable as a *right to the city*,<sup>98</sup> could end up being perceived by the majority of the population as a consequence of an unjust heteronomous legitimacy, imposed from above. Such a development, however, would be an inauspicious outcome, to say the least, for the future of coexistence in the city and, in a sense, the best recipe for alienating in their

<sup>97</sup> On the nexus between liturgy and urban spaces see the interesting considerations proposed by F. FRANCESCHI, *Liturgie della città, spazi urbani e proiezioni pubbliche della pluralità religiosa*, cit.

<sup>98</sup> Since its popularization in the early sixties, the formula 'right to the city' has become an ever more present slogan in both political and academic circles. An examination of its genealogy leads, however, to a milestone in philosophical reflection on space: H. LEFEBVRE, *The Right to the City*, Blackwell Publishers, Oxford, 1996 (1968); but, by the same author see, *The Production of Space*, cit. I will address this further in the final chapter.



daily lives the inhabitants of Pisa from the Constitution.

For all this, however, the Tuscany Regional Administrative Court cannot really be blamed. The responsibility must be traced back to the constitutional judge and the ways in which freedom, and religious freedom in particular, are *assumed* and *treated* as a parameter of constitutional legitimacy with respect to factual situations. In this direction, a sort of anamnesis of the constitutional jurisprudence on religious buildings, of which ruling No. 254/2019 represents something of an epitome, may be extremely useful.

### *3. Freedom as a parameter of constitutional legitimacy and the defectiveness/inexistence of the “right to a house of worship”*

To introduce an analysis of the modalities of the *treatment of freedom* in the discursive practice of the Constitutional Court, and the implications of those specific modalities with respect to the ‘religious building’ issue, I believe it is helpful to read verbatim a passage from the constitutional ruling no. 63/2016 concerning the constitutional legitimacy of Lombardy Regional Law No. 12/2005 as amended by Regional Law No. 2/2015, excerpted here:

Also censured is paragraph 2-ter of Article 70 (also introduced by Article 1, paragraph 1(b) of Regional Law No. 2 of 2015), which stipulates that the entities of religious denominations other than the Catholic Church, referred to in paragraphs 2 and 2-bis, ‘must enter into an agreement for urban planning purposes with the municipality concerned,’ and that such agreements must expressly provide for ‘the possibility of termination or revocation, in the event of a finding by the municipality of activities not provided for in the agreement.’

The appellant complains of an infringement of Article 19 Const. because the challenged provision would define with an overly general formula the prerequisites for the termination or revocation of the agreement, among other things, interfering with the freedom of a confessional body to also carry out activities other than those strictly related to worship (e.g., cultural activities or sports). The censure, therefore, refers only to the second sentence of paragraph 2-ter.

The question is unfounded in the following senses.

The agreement provided for in the provision under consideration,

which is necessary at the stage when the municipality is applying the regulations in question, must be inspired by the typically urban planning purpose of ensuring the balanced and harmonious development of built-up areas. Of course, the agreement may stipulate the consequences that may be determined in the event that the subscribing entity fails to comply with its stipulations, classifying the effect of violations according to their extent. The challenged provision allows the possibility of termination or revocation of the agreement to be counted among these consequences in the face of abnormal behavior. These are, evidently, extreme remedies, to be activated in the absence of less severe alternatives. In concretely applying the provisions of the agreement, the municipality will in any case have to specifically consider whether, among the tools that the town planning regulations make available for such eventualities, there are not others, equally suitable for safeguarding the relevant public interests, but less detrimental to freedom of worship, the exercise of which, as mentioned above, finds in the availability of dedicated places an essential condition. The failure to weigh all the interests involved may be reviewed in the appropriate forums, with the scrupulousness required by the constitutional rank of the interests pertaining to religious freedom.

The provision in question, thus interpreted, lends itself to satisfying the principle and test of proportionality, which require an assessment of whether the rule under scrutiny, which is potentially restrictive of a fundamental right such as freedom of religion, is necessary and appropriate for the achievement of legitimately pursued objectives, insofar as, among several appropriate measures, it stipulates that the least restrictive of individual rights should always be applied and imposes sacrifices not exceeding what is necessary to ensure the pursuit of the interests opposed to them.

In a slightly later passage of the same pronouncement, the Court, in finding the profile of illegitimacy concerning Article 72 R.L. No. 12/2005, as amended by R.L. 2/2015, paragraphs 4 and 7(e) warranted, further observes:

In the Italian Constitution, each fundamental right, including freedom of religion, is predicated together with its limitation; so that there is no doubt that religious practices, if contrary to 'morality,' fall outside the constitutional guarantee of Article 19 Const.; nor is it disputed that, if members of a denomination organize themselves in a manner 'incompatible with the Italian legal system,' they cannot appeal to the protection of Article 8, second paragraph, Const. All constitutionally protected rights are subject

to the balancing necessary to ensure unified and non-fragmented protection of the constitutional interests at stake, so that none of them enjoys absolute and unlimited protection and can, thus, become 'tyrants' (Judgment No. 85 of 2013).

Evaluating the two excerpts together reveals modalities for the configuration of religious freedom—and in some ways, freedoms in general—that underlie, in my opinion, the problematic aspects found in the decision of the Tuscany Regional Administrative Court and before that in the legislation and administrative regulations, together with the related practices, regarding the religious phenomenon. Beyond the outcome of the assessment made by the constitutional judge with reference to the regulations respectively challenged in the excerpts above, in each of them some leading factors of the qualification of places of worship and the instruments of protection of religious freedom can be discerned. These elements can be configured as follows:

(a) A *reified* or *cosified* and *non-semantically relational* conception of the place of worship: as if to say that it is an object placed in space and endowed with its own intrinsic and definite signification which is consonant with its material consistency and certain characteristics embedded in the object itself.

(b) An interpretation of religious freedom and its projection into the space available for worship as a right. As such, the right to have a *space* for a *place of worship* is configured as a scheme that is semantically defined in a relatively abstract and rigid way by the legal system and interpreted by the courts accordingly. This definition consists of outward behaviors and empirical elements that are instrumental to the adoption of the former.

(c) Religious freedom itself, in turn, appears to be regarded as a *right* or a *branched series of rights* that correspond to preestablished patterns of action and are recognized by the system according to the categorical patterns described in (a) above.

(d) A conception of constitutional rights (and, within them, *rights of liberty*) as behavioral patterns endowed with constitutive limits (“*Each fundamental right, including freedom of religion, is predicated together with its limit*”) and systematic limits (“*All constitutionally protected rights are subject to the balancing necessary to ensure a unified and non-fragmented protection of the constitutional interests at stake, so that none of them enjoys absolute and unlimited protection and can, thus, become 'tyrants'*”). The patterns of behavior in question are, in turn, represented as co-extensive with, or undiffer-

entiated from, their morphological appearances/characteristics, i.e., their primary properties or outward, empirical, (assumed) objective characteristics. Consequently, the definition of the content of rights and their balancing are to be achieved using morphological-external patterns of sets of features, the same ones that define (as denotations) the checklist of constituent elements of each category and that are summarized in the words that linguistically indicate it. The implicit consequence of this approach only *masquerades* as *relationality*. The prescribed 'balancing'—which, if genuinely engaged would mean managing the underlying relationality, as analyzed in Section 2, including reference to its spatial projections—is implicitly understood as the mutual limitation between behavioral patterns (precisely, considered in their morphological characteristics)<sup>99</sup>. The idea conveyed by this view of semantic relationality is based on the stability of the defining (and behavioral) schemas and the variation of their limits, as if these were merely contingent, marginal, and not related to the *identity* of the semantic structure (often referred to as the *minimal core*) of each of the compared and balanced categorical schemas. As mentioned above, this depiction of the meaning of subjective prerogatives (rights, freedoms, duties, etc.) and their combined application with respect to *facts* coincides with the so-called *legal* topic—or, at any rate, supports it. This is, however, a rhetorical-argumentative approach based on certain epistemological-cognitive assumptions regarding the structure of categories, which—also in

<sup>99</sup> Here I refer to the reasoning proposed by A. PACE, *Interpretazione costituzionale e interpretazione per valori* cit., p. 19 ff.; with specific regard to the mutual limitation between constitutional norms (or values), understood in terms of exclusion and/or exception, or even prevalence, see L. BRUNETTI, *Libertà religiosa* cit., p. 18 f.; 20 ff., who, in turn, recalls R. GUASTINI, *Teoria e dogmatica delle fonti*, in A. CICU and F. MESSINEO (eds.), continued by L. MENGONI, *Trattato di diritto civile e commerciale*, Giuffrè, Milan, 1998, p. 230, where it is stated, “‘bilanciare’ non significa ‘contemperare’, o alcunché del genere: non significa cioè trovare una soluzione ‘mediana’, che tenga conto di entrambi i principi in conflitto, e che – in qualche modo – li applichi o li sacrifichi entrambi. Il bilanciamento consiste piuttosto nel sacrificare un principio applicando l’altro”. Translation: “to ‘balance’ does not mean ‘to reconcile,’ or anything of the kind: that is, it does not mean to find a ‘median’ solution, which takes into account both conflicting principles, and which—somehow—applies or denies them both. Rather, balancing consists in sacrificing one principle by applying the other”. A position that reveals the underlying ‘ontologizing’ component hidden behind the apparent neatness of linguistic-analytic approaches. Regarding a communitarianism which distinguishes analytic philosophy of law and its interpretive approaches, somewhat similar to Wittgenstein’s semantic conventionalism, see M. RICCA, *How to undo (and Redo)* cit. and M.D. ADLER, *Constitutional Fidelity, the Rule of Recognition, and the Communitarian Turn. Contemporary Positivism*, in *Fordham Law Review*, 75, 167, University of Pennsylvania Law School, Public Law Working Paper No. 06-19, 2006.

the wake of the most recent studies on categorization<sup>100</sup>—I do not find plausible and further I consider to be a source of recurring hermeneutical and applicability problems. In that sense—and this is the driving reason for this text—the Pisa Mosque affair, and all the recent constitutional issues generally related to houses of worship, seem to me to represent a kind of paradigmatic exemplar of those problems.

(e) Difficulty, or at least profound ambiguity, in balancing religious freedom - considered as a *right* - and other constitutionally and legislatively protected interests and rights. This is a difficulty related to the problematic distinction, within religious freedom, of the *outward* from the *inward* aspect, the morphologically material dimension and the dimension that is semantically related to the sphere of mental representations, in short the *outer forum* from the *inner forum*. This dilemma, admittedly, runs through the entire history of modern legal thought and can hardly be dissociated from the positivist approach to religious freedom and, I would say, to all constitutionally recognized freedoms. I will try to illustrate, in a concise way its causes.

Since religion pertains to the *internal forum*, it cannot fall entirely within the *semantic area of jurisdiction*, so to speak, of the secularized state, whose law *must* be characterized by *externality*. This requirement is articulated by modern political and legal thought precisely to protect freedom. Subjects of law can only be such, especially in terms of their passive profile, that is, as recipients of norms, in relation to their actions and not their thoughts; put differently, they are only answerable to the law for their conduct and not for their motives.<sup>101</sup> The secular state cannot lay any normative and conforming claim upon the sphere of conscience; this is its founding principle. And yet, recognizing and protecting religion, or rather *religious freedom*, by looking only at the material and morphologically considered meaning of its manifestations is a kind of contradiction in terms. Constructing buildings, joining hands, kneeling, even ingesting circular portions of a dehydrated compound of bread and water (the Catholic communion wafer), are gestures that if viewed morphologically and in their *externality* appear to be comparable to others, categorizable within general

<sup>100</sup> For further references in the literature on categorization, see M.L. VAZQUEZ, *Secularisms* cit.

<sup>101</sup> For additional bibliographical indications and a reading of the criminalistic principle of motive irrelevance in the context of the liberal criminal law approach to the so-called criminal law of fact, please see M.L. VAZQUEZ, *Futile Otherness: Religion and Culture vs. Futile Motives in Criminal Law*, in *Calumet Intercultural Law and Humanities Review*, 14-2022, pp. 35-65.

schemes which have nothing to do with the projections of meaning that the *subjective, intimate* gaze of the believing subject connects to them. If the secular state were to look at the actions of believers of any creed and categorize them on the basis of their outward morphological elements alone and by reason of their normative implications, *religious* moments would remain devoid of legal relevance. In order to follow up on the constitutional recognition of religious freedom, legal discourse must necessarily make a journey into the intimate, into the invisible, into that which has a merely sign-like consistency and is not immediately discoverable on the material plane, defined and delimited by so-called primary qualities. Crossing the barrier of the *internal forum*, albeit for the purpose of protecting *religious freedom*, nevertheless represents an uneasy activity that is not very consistent with the legitimacy assumptions of the secular state. It is so because such activity ends up setting modern law *against itself*. It is forced to move along a path of categorization of the subjective sphere, of the *internal forum*, which in itself implies a latent self-contradiction of state law if compared to the assumptions of secularization. In order to conceal the insufficiency of the objectifying epistemology rooted in the purported dogma of the *externality* of law, the *encroachment into the internal sphere* has been clothed and fictitiously disguised with yet another of the many distinctions of modernity: that between the public and private spheres—a distinction that not coincidentally includes an implicit spatial mapping. The public/private pair is, in effect, a transfiguration in spatial or spatialized terms of the division between external and internal forum of theological-moral and canonical derivation.<sup>102</sup> Such a linguistic transposition, a kind of translation, constitutes in many ways a dissimulating move that has been applied to the legal discipline of liberty, recovering a categorization dating back to Roman law (*ius publicum/ius privatorum*), in order to camouflage, under the guise of a customary legal jargon, a kind of *overstepping* of modern law from its competencies: namely, the manipulation of the *internal forum*.

Indeed, the public law/private law distinction—again, dating back to Roman law—originally indicated the two areas concerning a) the relations of individual subjects of law with institutions and b) the relations between individuals, that is, the sphere of intersubjective relations. The modern experience of freedoms, generically classified among matters pertaining to public law, has nevertheless been shown to take shape simultaneously in both directions: that is, both toward the state and the institutional dimen-

<sup>102</sup> See P. PETKOFF, *Forum Internum and Forum Externum in Canon Law and Public International Law with a Particular Reference to the Jurisprudence of the European Court of Human Rights*, in *Religion and Human Rights*, 7, 3, 2012, p. 183 ff.

sion and toward other individuals,<sup>103</sup> and this for a specific reason: freedom *is* relation, it arises from relation and is directed to reshape it through processes of universalization of subjective instances. Relationships between individuals, within every social circuit and even more so in modern ones, are not predetermined by *nature*<sup>104</sup> but rather constitute a *space* that is artificially/culturally *generated by human activity*, symbolic processing capacities and the consequent transformations of behavioral habits, which in turn involve the material world by continually reshaping it in unprecedented, ever-renewed ways. The totality of these activities is the subject/object of discipline for both public and private law. This is also because, in the legal imagination of modernity and with reference to the very idea of the social contract considered in its constitutional significance, individual freedom always stands on a plane of *horizontality* with respect to both the state and other individuals. Constitutional freedoms, inspired by liberal constitutionalism rather than so-called proto-liberal thought, are not subjective public rights that can be activated against the state but remain nevertheless based on a self-limitation of all-encompassing normative and conformative capacity. They certainly act as limits but also as ends of state activity since they represent the source of its legitimacy.<sup>105</sup> In other words, the scope of freedom is a source that continually renews its determinations of the perimeter and content of normative activity. It is in this sense that a view of freedoms that is *only* ‘negative’—as also repeatedly emphasized in Italian constitutionalist thought<sup>106</sup>—no longer finds an adequate place in the contemporary constitutional context, especially because of its democratic-pluralist character.<sup>107</sup>

<sup>103</sup> With reference to the relevance of constitutional norms within private relationships, among many contributions, see P. PERLINGIERI, *Constitutional Norms and Civil Law Relationships* [1980], in *Italian Law Journal*, 1, 1, pp. 17-49; and, more recently, M. GRONDONA, *L'ordine giuridico dei privati. Premesse teoriche-generalì per uno studio sul diritto dispositivo in ambito contrattuale*, Rubbettino, Rome, 2008.; ID. *The constitutionalization of private law and the political role of the jurist*, in *Academia Letters*, Article 3069, 2021, <<https://doi.org/10.20935/AL3069>>; G. VETTORI, *Il diritto ad un rimedio effettivo nel diritto privato europeo in European private law in Persona e Mercato - Saggi*, 2017, pp.15-30.

<sup>104</sup> In this sense, as I specify further below, I do not follow the conceptual mappings proposed by A. PACE, *Libertà e diritti di libertà in Studi in onore di Pier Francesco Grossi*, A. D'ATENA (ed) 2009, p. 965 ff., available online and to which the quotations refer, 24 ff.

<sup>105</sup> H. HELLER, *Dottrina dello stato*, Edizioni Scientifiche Italiane, Naples, 1988; see, also, A. BALDASSARRE, *Diritti inviolabili*, in *Enc. Giur. Treccani*, XI, 1-43 and ID., *Diritti della persona e valori costituzionali*, Giappichelli, Turin, 1997.

<sup>106</sup> A. PACE, *Problematica delle libertà costituzionali*, Cedam, Padua, 1992; ID., *Libertà e diritti di libertà* cit.

<sup>107</sup> In a contrary sense, inspired by a comprehensible desire to offer guarantees but destined

The idea of *negative freedom*, which would imply a mere abstention of the state-institution as a sufficient requirement for its protection and effective manifestation, has been a *fiction*<sup>108</sup> since its conception. It was sustained by a key assumption that is implicit to secularization theory and illuminates the argument I am making here: the assumption that the *external* dimension, that of *facts*, is objectively definable, regardless of subjective projections, individual values, and the gaze projected from the *internal forum*. The world of *objective facts* can thus be mapped out by distinguishing a *public sphere* and a *private sphere* (which, even in the early days of modern liberal thought, did not align with the distinctions between *public law* and *private law*). Of course, this work of segmentation of the space intended to accommodate human activities was based (and unfortunately still is based in the mindset of liberal jurists) on a representation of a *taken for granted* social reality, already realized, and somehow coinciding with a predetermined arrangement of powers and roles within society. In this way, the idea of negative liberty, precisely because it rested on an internal/external and public/private division based on an almost ontologically rendered social topography, silently forged internal projections precisely by not defining them, and in so doing removed them from the possibility of change. All freedoms suffered this implicit restriction in the liberal era, hampering their power to semantically redefine subjectivity and social space. This can also be seen in the way the contemporary world is dominated by a neo-liberal *quasi-religion*. In this respect, the assertion that negative freedom does not exist, since freedom always implies 'doing,' is entirely sustainable<sup>109</sup>. What complicates this perspective is what is generally identified by jurists as its corollary. That is, that freedom consists of the list or set of its extensions, that is, the outward behaviors that define its projections, which in turn can be configured as a constellation of rights. This way of conceiving freedom, as a right to which other predefined legalized behaviors are attached, in effect defeats the critique of the mystification inherent in the idea of negative freedom. The alleged abstention of the state

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to increase the risks of manipulation of the freedom it is intended to avoid, cf. the position of S. FERLITO, *Diritto soggettivo e libertà religiosa. Riflessioni per uno studio storico-concettuale*, Edizioni Scientifiche Italiane Naples, 2003.

<sup>108</sup> For a historical reconstruction of the relationship between negative liberty and positive liberty from the constitutional point of view, see O. CHESSA, *Libertà costituzionali e teoria costituzionale*, Giuffrè, Milan, 2002, p. 314 ff. With reference to the idea of positive liberty as reconstructed by ecclesiastical doctrine, see G. CASUSCELLI, *Post-confessionismo e transizione*, Giuffrè, Milan, 1984, p. 30 ff.

<sup>109</sup> See, again, A. PACE, *Libertà e diritti di libertà*, cit., 18 ff.



presumes an objectification of the social facts that delimits the spatial and behavioral scope of freedom and its content. But of course, in its semantic articulations, that presumption is the product of an activity of categorization that forges individual action, and fixes its form and boundaries. In other words, no matter how the normative activity is configured, it will always have a positive, compliant content, merely because it is dictated by regulation. Even if it is done negatively, through abstention, nevertheless, it is not possible to regulate something without at the same time defining and thus shaping it<sup>110</sup>. At the same time, it is not possible to distinguish

<sup>110</sup> With reference to the illusion of the ‘non semantically generative’ character —so to speak—of the constitutional provisions expressing a negative protection of freedom, I think it is also worth emphasizing here the only apparent and ultimately rhetorical character of the distinctions between a constitutional interpretation that sees in the text of the Constitution rules/limits as opposed to principles/values: see, in this regard, R. GUASTINI, *L'interpretazione dei documenti normativi*, Giuffrè, Milano, 2004, p. 201; A. C. JEMOLO, *Che cos'è la Costituzione*, Donzelli, Rome, 1996 (1946), pp. 59-60; A. PACE, *Interpretazione costituzionale e interpretazione per valori*, cit., also available online, where cf. p. 4 ff.; F. MODUGNO, *Interpretazione per valori*, cit., pp. 51 ff., although the latter author places himself—as previously observed—in a very different perspective from the others probably because he is inspired by a dialectical view of the meaning and dynamics of the normative system. Indeed, this distinction rests on the (supposedly) non-hermeneutical but ‘ontologizing’ distinction between principles and rules—as such very much dated—but traced by contemporary scholarship to the reconstructive proposal of Ronald Dworkin, R. DWORKIN, *Taking Rights Seriously*, Harvard University Press, Cambridge, 1977, 24 ff.; but also ID., *Law's Empire*, Harvard University Press, Cambridge, 1986. Space constraints prohibit addressing the issue at length, but I would like to make two observations. First, I believe the most lucid challenge to the distinction between rules and principles proposed by Dworkin was made by the author who is the main target of his criticism, namely, Herbert L.A. Hart, in his *Post-scriptum* to H.L.A. HART, *The Concept of Law*, Oxford University Press, Oxford, 2012, p. 259 ff. What I find most relevant is that this critique is developed on a systematic level, and by a positivist-analyst like Hart. The second observation I would like to propose concerns the absence of a theory of categorization and of the necessary references to the relationship between categories and time—indispensable for a semiotic-pragmatist analysis—in the observations of the legal doctrine, not only of Italy but of practically all Western countries influenced by the nineteenth-twentieth-century positivist tradition. If categorization were to be understood not as a photographic representation of reality but as a means of managing it through the unfolding of future experience—a consideration that applies even more to law—it would emerge with immediate clarity how meaning is genetically and constitutively imbued by the means/ends-values dialectic (disregarding here the Weberian distinction between purposes and values). From this different perspective, the distinction between rules and principles turns out to be illegitimate simply because it can only be employed on the condition that the semantic-social context existing at the time of the enactment of norms (including constitutional norms) remains fixed—which is then the underlying assumption of both Hart and Kelsen. Yet it is precisely the lack of this fixity that is at the origin of law, teleological-axiological discourse, and the activity of categorization.

negative freedom, so criticized, from positive freedoms understood in a popular sense, equated with so-called social rights. This is because in my view, in the universe of social discourse, a sphere *generated*—and not merely described—through symbolic activity, the bio-mechanical aspects of behavior<sup>111</sup> cannot be separated from the sociocultural aspects, which are the specific result of normative and institutional design. Freedom, as I continue to argue, always has *relational* significance. When considered morphologically, behaviors which become the target for a diminution in the *legalized* meaning of their projections, only make sense and express the emancipatory tension inherent in freedom because the material world is populated by others. To put it plainly: on a desert island populated by one person, freedom of expression would be unlimited materially but substantially severed at the root in its meaning. To say that freedom of expression consists of certain communicative behaviors described in morphological terms therefore ignores the presence of others, the relationship with others, both of which are a dynamic constituent of the very act and substance of communicating. It is the *relationship* that sustains the concept of freedom, not the other way around. This is why the idea that freedom and rights balance each other as concepts already formed and shaped once and for all in their essence of meaning is deeply misleading. It bears repeating: rela-

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Every category, in other words, contains within itself, in its very morphological structuring, an axiological/teleological element that determines what is to be within it and what is to remain outside of it. Ends and values, however, are not indifferent and immune to context and its relational texture, nor to its inevitable changes. It is for this reason that the distinction between interpretation by rules and interpretation by principles and/or values makes no sense in absolute terms. It is language itself, regardless of whether it is deontic/performative or constative (to recall Austinian categories), that denotes in structurally axiological/theological terms the categorization and, consequently, the entropy of their semantic spectrum. Too often—and in this I follow Mario Ricca, *How to Undo (and Redo) Words with Facts*, cit.—jurists seem to overlook that the political social contract underlying the Constitutions rests on a *semantic social contract*, and that the game of defining it is never quite finished. For the semiotic ancestry of the concept of the 'semantic social contract' I refer to M. RICCA, *Ignorantia Facti Excusat: Legal Liability and the Intercultural Significance of Greimas' "Contrat de Véridition"* in *Int J Semiot Law* 31, 2018, pp. 101–126, <<https://doi.org/10.1007/s11196-017-9529>> and to A. J. GREIMAS, *Il contratto di veridizione*, in ID., *Del senso II. Narrativa, modalità, passioni*, Bompiani, Milan, 1984, p. 101 ff. Ultimately, if the meaning and thus the prescriptive sense of a text is coextensive with its derivation from the past, it risks *betraying* the function and thus the genetically literal sense of what any language and any categorization express, namely, the need to capture the future *through* the changes it brings into experience, not to erase them. This is also the main function of freedom and its inclusion in modern constitutional language. In this sense, see again J. DEWEY, *Logical Method and Law* cit.

<sup>111</sup> A. PACE, *Libertà e diritti di libertà*, cit., p. 26 ff.

tionships are the generative engine of concepts, not the other way around. And freedom is a kind of factory of relations, a source that continually regenerates, always proposing new meanings, dislocating *further*, as it were, the horizon of human action through the inexhaustible re-modeling of the communicative and pragmatic universe that is (the authentic) human *home*.

In the liberal tradition, by contrast, freedom is seen as a consequence of law and, more specifically, of a prior enumeration of rights.<sup>112</sup> Unlike the constructivist perspective of Jacobinism and Rousseau, which is often labeled as an expression of *totalitarian democracy*, in the proto-liberal imagination, it is *rights* that surround the spatial and behavioral spheres within which the freedom of individuals is articulated. In other words, freedom *follows* the creation of legal subjectivity, it does not precede or shape it. To be free means, therefore, *to be able to do or not do* what legal language has previously defined and protected—even from the *excesses of power* of the legislature—through the fundamental rights contained in constitutions.<sup>113</sup> On the one hand, this approach overcomes the view of freedom as a subjective public right but on the other it reaffirms a central aspect of it, since it presumes the substantive and defining co-extensiveness between freedom and rights and, therefore, a division between public and private

<sup>112</sup> The contemporary liberal model of this approach can be traced in F.A. HAYEK, *The Constitution of Liberty*. University of Chicago Press, Chicago, 1960, p. 13; Id., *The Principles of a Liberal Social Order* in *Studies in Philosophy, Politics and Economics*, Chicago, 1967, p. 162. However, the primal schema can already be found in Hegel, specifically in G.F.W. HEGEL *Lineamenti di filosofia del diritto. Diritto naturale e scienza dello stato*, Laterza, Milan, as critically reported by A. HONNETH, *Freedom's right: The social foundations of democratic life* Polity, Cambridge, 2014. On the liberticidal implications of the public/private scan applied to freedom, itself declined as a right, see, in the same liberal area, I. BERLIN, *Four Essays on Liberty*. Oxford University Press, Oxford, 2002, p. 181 ff. Nevertheless, there is a widespread tendency in the liberal juris positivist domain to identify the universalization of liberty with *equal freedom* defined through the determination of rights, which in this way become prioritized or, at any rate, pre-conditions of liberty. In this sense, see H.L.A. HART *Are there any natural rights?*, in *Political Philosophy* Anthony Quinton (ed.), *Political Philosophy*, OUP, London, 1969, p. 53 ff., and I. BERLIN *Liberty*, cit., p. 125 ff.; H. STEINER, *The Natural Right to Equal Freedom*, in *Mind*, 83, 1974, p. 200 ff.; T. GRAY, *Spencer, Steiner and Hart on the Equal Liberty Principle*, in *Journal of Applied Philosophy*, 10 (1), 1993, pp. 91 ff.; but see also J. RAWLS, *The Priority of Right and Ideas of the Good*, in *Philosophy & Public Affairs*, 17, 4, 2003, esp. 257 ff.

<sup>113</sup> A. PACE, *Libertà e diritti di libertà* cit.; A. BALDASSARRE, *Diritti inviolabili* cit.; with reference to religious freedom, see F. FINOCCHIARO, *Libertà di coscienza e di religione - Dir. Eccl.*, in *Enciclopedia giuridica*, XIX, Treccani, Rome 1993, p. 2 ff.; P. DI MARZIO, *Contributo allo studio del diritto di libertà religiosa*, Jovene, Naples 2000; A. FUCCILLO, *L'attuazione privatistica della libertà religiosa*, Jovene, Naples, 2005.

space that is paradoxically preached and shaped in its scope and meaning by public law itself<sup>114</sup>. The great garantist fiction lurking in this discourse is concealed in the idea that the constitutional law of contemporary liberal democracies *recognizes fundamental rights*, including *freedom rights*, but does not generate them<sup>115</sup>. Once again, however, the function of recognition, if culminating in the definition of rights, presupposes that the private area of freedom is delimited by the public one and that both, in limiting each other, are based on objective, *factual* language with pre-determined meanings. If this were not the case, how would it be possible to speak of rights endowed with a positive consistency, protectable with certainty according to a sufficiently stable predetermination of their perimeter of meaning? This is the question, which is actually an implicit argument, advanced by those who equate freedom with rights. Except that from the invoked need for certainty and justiciability arises the tendency to *reify* in behaviors, in their morphological aspects, the meaning of freedom, the area of autonomy of individuals and groups, the frontier that would protect them from institutional encroachments.

To claim that within the perimeter of freedom, within that space, individuals or groups can do as they please, can self-determine, turns out to be a colossal fiction that can only be believed as long as all social and communicative actions remain within relatively stable cultural coordinates affected by limited pluralism; that is, any differences should impact the distribution of resources more than the *semantic content* of human action. The various social problems, e.g., gender discrimination, the protection of minors, protection of minorities, and above all, conflicts arising from the religious sphere—seen as *foreign, exogenous* from the universe of rationality encompassed by modern thought—are there to testify, with all the deficiencies of protection that contemporary law offers them, to the *liberticidal effects* of that *reification*. It is, however, nothing but the consequence of the split between *external* and *internal forum*, almost mockingly based on the proclaimed—and historically not at all unfounded—need to protect the freedom, first and foremost the freedom of faith and conscience, of citizens.<sup>116</sup> The issue is that if everything is converted into legal language

<sup>114</sup> See G. JELLINEK, *Sistema dei diritti pubblici soggettivi* (or. 1892), Società Editrice Libreria, Milano, 1912; and, with specific reference to religious freedom, F. RUFFINI, *La libertà religiosa come diritto pubblico soggettivo* (or. 1924), Il Mulino, Bologna 1992; G. CATALANO, *Il diritto di libertà religiosa*, (or. 1957), Cacucci, Bari, 2007.

<sup>115</sup> In this sense, see, again, A. BALDASSARRE, *Diritti inviolabili* cit.

<sup>116</sup> In this negative sense, the indictment offered by Sergio Ferlito can be shared, S. FERLITO, *Il volto beffardo del diritto. Ragione economica e giustizia*, Mimesis, Milan-Udine,

(necessarily) connoted by the character of *externality*, and thus also into rights *signified* on the basis of the same postulation of *objectivity*, then the *internal forum* will inevitably turn into a *cage*, however gilded; the same fate, in sequence, will also await the private sphere where the *internal forum* is assumed as a spatial and pragmatic projection.

In a world where names correspond to things presumptively caught in their *external objectivity*, law will assume those names, those words, as building blocks of an already inherently bounded social landscape. All of this, concretely, gives rise to a *semantic apriorism* that uses the empirical objectivity of *things and behaviors located in the external world* as a covert, silent tool to limit the possibility of subjects to express their freedom not only *in doing or not doing* what has already been defined but also in helping to modify the *way* of doing it and, with it, the *meanings* of the behaviors and objects involved in the new ways *freely* proposed<sup>117</sup>.

There is a lesson imparted by the very development of liberal thought in this regard and which, unfortunately, has not been sufficiently appreciated. It is about what could have been learned from the transfigurations of the idea of *property*. If in the proto-liberal period the right to property furnished the model for the idea of negative liberty, over time it has seen its scope of expression and its categorical spectrum progressively eroded precisely as a result of its semantic-teleological relocation in a public dimension. This dimension has been radically reconsidered because of the centrality attributed to what was once considered external to the proprietary sphere and aligned with (*other*) fundamental freedoms or rights. For that matter, traces of this reconfiguration of the right to property can also be found in the ruling of the Tuscany Regional Administrative Court which inspired my investigation. I refer to the passage of the judgment

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2016, although paradoxically, as reported, the author defends the idea of negative freedom: see Id., *Diritto soggettivo e libertà religiosa, Diritto soggettivo e libertà religiosa. Riflessioni per uno studio storico-concettuale*, Edizioni Scientifiche Italiane, Naples.

<sup>117</sup> In this sense, the Foucauldian-inspired critiques (see M. FOUCAULT, *The Order of Things. An Archaeology of the Human Sciences*, Vintage Books, New York, 1994) proposed by the *Legal Geography* current are also of great relevance in the analysis of positive law and the threats to equality lurking in the alleged neutrality of legal language and in the exteriority of its categorizations passed off as objectively factual, empirical, and therefore predictive of partisan interests or ideological or cultural inflections. See, in this regard, D. DELANEY, *Law as a Thing of this World*, in J. HOLDER and C. HARRISON (eds.), *Law and Geography*, Oxford University Press, Oxford-New York, 2003, p. 67 ff.; Id., *The Spatial, the Legal* cit.; Id., *Legal Geography I. Constitutivities, Complexities and Contingencies*, in *Progress of Human Geography*, 2014, pp. 1-7; in this regard, also see M.L. VAZQUEZ, *End of Secular City Limits?* cit.

in which it is observed that the modification of the urban plan made by the Municipality of Pisa caused “an expectation of the owner, qualified in terms far more pregnant than the expectation of the owner who intends to obtain the maximum patrimonial advantage from the use of his property.” And this is because by means of the building and its property, the plaintiff association intended to exercise “the *right* to freedom of worship, a fundamental right expressly protected by the Constitution” (emphasis mine). The words used by the TAR sound like a kind of historical summary of the parable of property, understood as the proto-model of negative liberal freedom. At the same time, the external limitations of the internal articulations of property, precisely at that juncture, almost seem to *save* it through *religious freedom*, which re-fills and re-signifies it. A freedom that, however, is itself qualified as a right, a circumstance that, in many ways, marks its fate as similar to that of property, understood as the quintessence of freedom (in this regard, it is worth recalling how Locke himself observed that “property is the measure of freedom”). There is something ironic about this sequence of mutual transfigurations and substitutions between property and religious freedom, especially with regard to the spatial projections of both, and the related axiological ramifications.

The house of worship and the vicissitudes of religious freedom in today’s constitutional arrangements embody, in many respects, the contradictions, silent mystifications and difficulties of modern law as a whole, since it is based on a postulated, absolute *exteriority* that is nevertheless forced to coordinate with the subjective, original dimension, alien to the state, and opposed to authority because it is inherent in the constitutional logic of freedoms. I have tried to show how the prototypical character of religious freedom turns it into a kind of screen onto which various problems are projected. It draws attention to an aspect pertinent to all freedoms and their genetic code, to use a biological metaphor. Freedoms as discussed thus far depend upon the pre-existence—albeit almost mythical—of the individual as opposed to the institutionalized condition of society. The juris-rationalist origin of this postulation has been widely criticized, and with good reason. There is no human being outside social relations. Human nature and culture are two sides of the same coin. The nature of human beings *is cultural*, just as human biological evolution is fueled by culture.<sup>118</sup> Nonetheless, (modern) jus-rationalist or jus-naturalist axioms have retained inescapable constructive significance in the interpretation of

<sup>118</sup> T. INGOLD, *Evolution and Social Life*, Routledge, London - New York, 2016; Id., *The Perception of the Environment: essays on livelihood, dwelling and skill*, Routledge, London - New York, 2011.

(even) contemporary constitutional language. The priority of the individual over institutions can be understood as a dynamic implication of the democratic arrangement of the legal experience of modernity. Within the corresponding imaginary, the state is no longer the locus of power, extrinsic *in the name of the people* but is rather the medium of a sovereignty that *belongs to and is exercised by the people and, therefore, by its individuals*. The primal source of law, beginning with the mythical foundational social/constitutional contract, is the self-determination of human beings and the universalization of individual expressions of it through processes of rationalization and generalization culminating in the creation of the language of equality and law. Statements to the effect that it is rights or law that make equality, legal subjectivity<sup>119</sup>, should be considered, from this point of view, fundamentally inappropriate; they are the result of a positivism filled with ingratitude and lacking in memory and theoretical awareness, if it intends to place itself within the framework of modern and contemporary democratic constitutionalism. Individual self-determination is self-limited—according to the Hobbesian scheme—by the social contract but is never definitively exhausted in it. And this is because it is not the institution that founds freedom, that can forge its contents, that can determine—in a kind of contradiction in terms—*when* and *how* individuals can declare themselves to be and, even more, *feel free*. The state institution and the entire legal system are instruments that are exclusively valid when in the service of the protection of freedom, which remains the end, their horizon of signification and legitimization. An end that cannot be exhausted in the contingently provided means but is always something more than them, thus ensuring their renewal. It is precisely for this reason that freedom arises as a source of legitimation and driver of meaning for the social and institutionalized world; it is thus recognized by the constitutional order as a source of hetero-integration of its own meanings—not only at the electoral moment.<sup>120</sup> The elimination of this channel of hetero-integration would be tantamount to an absolutizing social constructivism, where fact and value, being and ought-to-be, would both melt into the institutional cosmos. In this framework, the subject would find himself totally engulfed and annihilated by the state machine and the supposed absolute objectivity of its qualifications. This is the nightmare represented in the myth of the

<sup>119</sup> Cf., in this sense, A. PACE, *Liberty and Rights of Liberty*, cit. p. 18 ff., but, almost to follow the genealogical derivation, also already C. ESPOSITO, *Eguaglianza e giustizia nell'art. 3 della Costituzione italiana*, in Id., *La Costituzione italiana. Saggi*, Cedam, Padua, 1954, p. 25 ff.

<sup>120</sup> In this sense, see the analysis offered by A. HONNETH, *Freedom's right*, cit.

Tower of Babel, a symbol of a paroxysmal sociocultural unity capable of replacing creation. It is the same dystopia of the all-encompassing ideology of nineteenth-century statism stigmatized relentlessly by Victor Hugo in his *Les Misérables*.<sup>121</sup> It is the combination of these considerations that leads me to support the view of those who do not believe that *law makes liberty* and that legal/constitutional liberty can be reduced to a right or is merely the consequence—i.e., that it only accompanies—a definition of rights<sup>122</sup> (as *liberties* have been understood in *common law* since the *Magna Carta Libertatum*). However, freedom and rights, on the one hand, and *freedom* and *liberties*, on the other, are not equivalent, especially in the *civil law* universe. Rights derived from the need to ensure the exercise of freedom are instruments for it but cannot exhaust their semantic spectrum nor their pragmatic projections; nor can the idea of legal or constitutional liberty be reduced to the set of its extensions described/defined in terms of rights.

The religious sphere exemplifies this irreducibility because it represents the original frontier of the sharp division between internal and external forum in the political discourse of modernity and, therefore, also the origin of the dogma of the *externality* of modern law and legal language<sup>123</sup>. Religion and secularization are the poles of a dialectical relationship that draws both a cognitive and normative boundary. In a nutshell, the modern state declares itself incompetent in religious matters and uses this incompetence to emancipate itself from the religious legitimation assumptions of

<sup>121</sup> In this regard, I have tried to highlight the dangers of absolute legal constructivism through an analysis of the dialectic between the main characters of *Les Misérables* - Jean Valjean and Commissioner Javert - in M.L. VAZQUEZ, *Law's Dark Clarity: Hugo and the 'Misery' of Legal Categorizations*, in *Pólemos* 2022; 16(1): pp. 157-177. For some reflections on the relationship between the principle of responsibility and the theological problem of freedom, see A. ZANOTTI, *Actus humanus e il principio di responsabilità*, introductory essay to the volume, edited by A. ZANOTTI, *Il principio giuridico di responsabilità*, Bononia University Press, Bologna, 2014, pp. 11-36.

<sup>122</sup> I reiterate here that my analysis develops and applies to the subject of religious buildings what has been argued in more general terms by M. RICCA, *Art. 19* cit.; *Pantheon*, cit.; and more recently, *Otherness* cit. regarding the distinction between 'rights' and 'freedoms'; see, also, HONNETH, *Freedom's Right*, cit.

<sup>123</sup> I have addressed the complications related to internal and external fora, which are also at the basis of modern criminal law and the so-called *criminal law of the fact* within the liberal matrix in M.L. VAZQUEZ, *Futile Otherness* cit.; on the theoretical-epistemological assumptions of my analysis see M. RICCA, *Otherness*, cit. For an illustration of the distortions at the level of constitutional interpretation, specifically of Article 8 paragraphs 1 and 2, and Article 19, that the identification of freedom with a battery of rights would reveal at the morphological-behavioral level, see L. BRUNETTI, *Libertà religiosa e ordine pubblico* cit., pp. 23 ff.



worldly politics and law. At the same time, the secular institution cannot deny the existence of the religious dimension and is forced to regulate it while nevertheless keeping it distinct from itself. To resolve this dilemma—the contradictory nature of which I have already highlighted above—state law places religion, so to speak, beyond the curtain of freedom.

The implication of this spatial dislocation is that religion also becomes a *semantic elsewhere*. The state cannot autonomously define what is a house of worship, or a sacrament, or a deity, and, within certain limits (as witnessed by the peremptory and equally contradictory jurisprudence on the qualification and self-qualification of religious denominations), it cannot even define *religion*. Secular law is thus forced to hetero-integrate, to make a referral to another domain of meaning and experience irreducible to it.<sup>124</sup> This is an inevitable step if the state order does not want to deny its secularity, assumed as a crucial axis of its legitimacy. The *foreignness* of the religious experience and religiously based meanings, however, poses the problem of the *citizenship* of their projections in the civil and secular spheres. And since freedom is defined in positivist jargon in terms of ‘rights,’ the *foreign body*—the religious datum—that penetrates the state sphere and the linguistic circuits of *its* law must be treated with caution. How to *objectify it*, to *externalize it*, without denying the non-objectivity (and even non-rationality) of religion’s own subjective sphere? The only viable way has seemed, historically, to surround it with limits coinciding with the identification of entities that are themselves objectifiable, either in axiological or factual terms, according to the language used by the secular state and its law—as such, by definition anchored in *facts*. All this explains why the objectivity of ‘religious entities’—buildings, objects, gestures—is defined in the negative through a thicket of external limits. As a historical consequence of the Western experience, religion is placed simultaneously *outside* and *inside* the secular cosmos. Ultimately, in the settling of relations between law and religion, religion has had to be constantly translated into the legal language of the state but—in principle—cannot be substantially reshaped except by a discourse that limits it from the *outside*. This possibility is, however, a rhetorical fiction, since to limit is always to reshape, even if indirectly. And yet, since freedoms—as pointed out earlier—are interpreted as *rights*, some form of definition, whether direct or indirect, is still necessary. Hence the wild ambiguity and continual semantic conflicts

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<sup>124</sup> On the centrality of the category ‘*renvoi*’ and the related normative technique throughout the development of Italian ecclesiastical law, see M. RICCA, *Metamorfosi della sovranità e ordinamenti confessionali. Profili teorici dell’integrazione tra ordinamenti nel diritto ecclesiastico italiano*, Giappichelli, Turin, 1999.

concerning the coordination between religious domains and the state. The totality of these circumstance seems to advance a chronic tendency to define the religious sphere as *special* and sometimes—as can even be seen in constitutional jurisprudence—leads to qualifying religious freedom, even if within limits, as a kind of *super-right* by reason of an irreducible *specificity*.

At this point, a question might arise: what makes religious freedom prototypical and yet different from other freedoms with respect to state regulation? To attempt an answer, I will first address the continuities shared by different freedoms. There is an analogous lack of consistency when regulating freedom by applying the technique used to define rights. This technique is calibrated on morphological-external and 'objective' categorizations of the behaviors and material entities involved in their manifestation—which are expressions of freedom—without taking into account the *space*, the *origin* of free action and its plausibility. This latent incoherence frustrates the relational and dynamic character of freedom. The matrix of freedom lies in the inexhaustible source of autonomy and reshaping of meanings that lie within the cognitive and ethical capacities of human beings, thus in the internal forum. This capacity can never be exhausted within the heteronomous and pre-fixed patterns of law, and processes of majoritarian political integration. The same gesture, the same object, can take on totally different meanings in the projections of significance articulated by the individual in the sphere of their mental representations. And if this is true for any factual situation, it is even more dramatically true—in semantic terms and thus in terms of legitimate legal regulation—in the case of freedom. If 'objectivity' is the result of processes of universalization managed through intersubjective communicative relations (at least in the secular universe), then freedom is the motivating force capable of giving new beginnings, at every moment, to the unfolding of those processes. Within the framework of modern and contemporary constitutionalism, it should always be consistently treated as a *source of law*. For this reason, the logic and discourse of rights is not fit to ensure the effectiveness of meaning of the constitutional provision of freedom as a subjective prerogative. And this in spite of what can be found in the language of the constitutions themselves (including the Italian one), which in speaking of "the rights of" or "the right to..." reveal an aspect of internal lexical incongruity. Still, with regard to the Italian constitution, I do not think it is a coincidence that Article 13 reads, "personal freedom is inviolable" rather than "everyone has the right to exercise personal freedom." It is immediately perceptible how the second option becomes oxymoronic since the person—so central to the

ideal background of Italian constitutional discourse—would be defined as a *consequence* of legal discourse rather than as its origin, and this, moreover, at the moment when that discourse expresses the person's freedom. The Constitutional Committee must have realized that assuring *human subjects* the 'right to be free *to be persons*' would sound too jarring and ultimately bewildering if not distorted.

The difference between freedoms as a whole and religious freedom specifically lies in the circumstance that when it comes to religion, the process of hetero-integration of law cannot become a forging of new paths of universalization since religion would thereby *pollute* the secularity and objectivity of state legal discourse.<sup>125</sup>

The microcosm of the construction of religious buildings and the interventions made so as to regulate it, including those arising from jurisdictional junctures, provides an immediate and almost astonishing case study for considering the issues just outlined. Jurists engaged in the analysis of legislation and administrative activity in this area often observe how the mere appearance of the adjective *religious* in the definition of a case is enough to compel the authors of regulatory or administrative acts to immediately exert themselves in imposing rules, limits, specifications, etc.<sup>126</sup> It is almost as if the house of worship, as opposed to all the other

<sup>125</sup> While the view provided here may appear harsh and ultimately a defective restitution of the status of religion in the public sphere, this is in essence the maximum threshold that many authoritative voices in philosophical-political doctrine believe can be granted to the entry of religious knowledge into the secular sphere. See, in this sense, among many, J. RAWLS, *Political Liberalism*, Harvard University Press, Cambridge MA, 1993, p. 59 ff; p. 216 ff; J. HABERMAS, *Religion in the Public Sphere*, in *European Journal of Philosophy*, 14/1, 2006, pp. 1-25 <<https://doi.org/10.1111/j.1468-0378.2006.00241.x>>; C. LABORDE, *Liberalism's Religion*, Harvard University Press, Cambridge MA, 2017, p. 197 ff.

<sup>126</sup> In this regard, it would suffice to recall the Council of State's specification on the recognition of the legal personality of entities. According to this guideline, with reference to the so-called 'religious denominations without an official State agreement (*intesa*),' the presence of an unspecified 'worship purpose,' whatever its importance in its overall legally relevant activity, would be sufficient to configure the application of the discipline set forth in Article 2 of Law 1159/1929. See, most recently, Cons. State Opinion Sec. I, no. 1875/2020. On this topic, see G. D'ANGELO, *Declinazioni giuridiche*, cit. p. 187; P. FLORIS, *Comunità islamiche e lacune normative. Lente che non c'è: l'associazione con fine di religione o di culto*, in C. CARDIA, G. DALLA TORRE (eds.), *Comunità islamiche in Italia. Identità e forme giuridiche*, Giappichelli, Turin, 2015, p. 75 ff.; M. D'ARIENZO, *Gli enti delle confessioni religiose diverse dalla cattolica. Il dialogo istituzionale e la prassi amministrativa*, in *Stato, Chiese e pluralismo confessionale*, online journal <<https://www.statoechiese.it>>, 13, 2022, p. 41 ff.: where it is pointed out that the cited Council of State guideline essentially inhibits the social formations of denominations without an *intesa* from being able to access the recognition of legal personality under Legislative Decree 361/2000—a possibility which is

buildings intended for other activities, is a kind of *monstrum*, a *foreign body* from which the *public space* must be *immunized*, using countless measures: those that in the title of the second section I have precisely called *the rest*.<sup>127</sup> Simultaneously, however, those same scholars tend to recognize a kind of qualifying hypertrophy whereby the slightest religious element is enough to make a building or part of it defined as a 'place of worship' or 'pertaining to worship' in order to make it subject to the consequent limiting characterizations. Alternatively, pulled beneath the wing of protection of the dedicated discipline are activities that do not pertain to religion understood on *its own terms*, at least according to the logic of distinction/separation intrinsic to secularization. Nonetheless, it is further noted that the lack of recognition of some minority religions often pulls the legal qualification of their activities under the auspices of common law legislation, on the back of a *mimetic* or *dissimulative* attitude that, however, does not take into account *specific religious needs*. As will be seen, in promptly recording the above-mentioned contradictions, inconsistencies and deficiencies, it seems that we fail, nevertheless, to identify their source. As I have tried to make clear, the source lies in the *reification* and *reduction to law* of manifestations of freedom. If we fail to *return to the origin* of the problems, the only remedy lies in the need for—yet again—a renewed, but unspecified, *special law in step with the times*.<sup>128</sup> Failure to trace the theoretical and ideological—as well as epistemological—roots of the problem of legal secularization and the discipline of freedom, of the mappings between external and internal forum, of the qualifications of objective and subjective and so on, forces one to repeat the same formulas over and over again: somewhat as if one were, to use Wittgenstein's well-known image, 'flies trapped in a bottle.' And the bottle, in this case, is that of secular legal thought, its epistemological assumptions and the inconsistencies arising from them. Until a way is found to *get out of that bottle*, it will not be possible to be rid of its limitations.

When one considers Muslims and their recent presence in Italy—as addressed in the case of the Pisa Mosque—the problems that arise when

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instead, paradoxically, allowed to the Catholic Church as well as to entities of disciplines with State agreements.

<sup>127</sup> See in this sense, A. FERRARI, *Libertà religiosa e nuove presenze confessionali (ortodossi e islamici): tra cieca deregulation e super-specialità, ovvero del difficile spazio per la differenza religiosa*, in *Stato, Chiese e pluralismo confessionale*, 2011, p. 18; I. ZUANAZZI, *La convivenza delle religioni negli ordinamenti giuridici dei paesi europei*, Giappichelli, Turin, 2016; F. ALICINO, *The Place of Minority Religions* cit., p. 15 ff.

<sup>128</sup> Again, A. FERRARI, *Libertà religiosa* cit., p. 25.

equating freedom with *a right* are in glaring evidence (but the argument applies to any religion that is distant from the cultural lexicon of the Italian legal system). This is because limitations in the negative are not enough to discount a *fact* that cannot be taken for granted simply because the knowledge needed to understand its meanings—and thus the unprecedented profiles of legal significance that emanate from it—are not available to legal practitioners. And so, to regulate the alien *monstrum*, two strategies are adopted. The first consists in affixing to new phenomena the same categories borrowed from centuries-old familiarity with the Christian, and more specifically Catholic, experience. The second is employed when the superimposition just mentioned fails because the *new religion* conspicuously escapes the perimeter of *the categorizations* used to legally regulate (albeit negatively, that is, by limits and definitions) the *confessional manifestations* of the Catholic religion. In such a case, the reaction may be the disjointed one of absolute *denial*, rejection and obstructionism—as captured, indeed, by the Tuscany Regional Administrative Tribunal, which bluntly imputes to the Municipality of Pisa a clear intention, unequivocally manifested by the adoption of a sequence of incongruent acts, to prevent the construction of the city mosque. This second attitude, in any case, can also be found in the *factual* aspects of the normative situations<sup>129</sup> submitted to the Constitutional Court's judgment. In this sense, Judgment no. 254, 2019 is truly paradigmatic.

The pronouncement just referred to adjudicated the unconstitutionality of Article 72, paragraphs 2 and 5, of Lombardy region law no. 12 of 2005, with reference to two main issues:

(a) Requiring the approval of the Religious Equipment Plan (PAR) and its coordination with the Territorial Government Plan (PGT) for the possibility of constructing buildings of worship or buildings intended for religious activities in municipal territories. In both of the provisions censured, administrative action appeared to be ruled by regional legislation establishing overly vague, scant criteria for the exercise of its discretion,

<sup>129</sup> See E. OLIVITO, *Il fatto nel giudizio sulle leggi*, cit.; and, on the category of 'normative situation' specifically, A. RUGGERI, *Storia di un "falso". L'efficacia inter partes delle sentenze di rigetto della Corte costituzionale*, Giuffrè, Milan, 1990, 107 ff.; and before that, S. PUGLIATTI, *La proprietà e le proprietà con riguardo particolare alla proprietà terriera*, Giuffrè, Milan, 1954; A. FALZEA, *Introduzione alle Scienze giuridiche. Il concetto di diritto*, Giuffrè, Milan, 2008. On a philosophical and epistemological level, the idea of situation as an integrated dimension between cognitive activity and environment synthesized in habit, and thus understood as a background for any symbolic categorization and its signifying scope, see J. DEWEY, *Logic and the Theory of Inquiry*, Henry Holt and Company, New York, 1938.

and this with respect to both the *content* of the aforementioned approvals and the *method*. The discipline, moreover, was legitimized on the basis of alleged urban planning requirements that were however not calibrated on the actual urban impact of buildings intended for worship, and thus disregarded whether they were buildings that could accommodate considerable flows of people or, instead, small spaces usable by only a few worshippers at a time. According to the Court, vagueness and non-distinction of the factual situations related to the construction and use of buildings intended for religious activities made the regulations in question excessively restrictive of religious freedom, which instead constitutes a fundamental right based on a positive interpretation of the secular nature of the Italian state (Judgments 203/1989, 63/2017) and thus should be the subject of supportive regulatory policies. As a result of all this, there was a violation of Articles 2, 3, and 19 const.

(b) The uncertainty of the timing for the approval of urban planning instruments, and the inequality between the treatment reserved for the realization of other public interests, which also affect the urban fabric, and the more limiting regulations applied to activities pertaining to the religious sphere. Again, the question of legitimacy was found to be justified with reference to Articles 2, 3, and 19 of the Constitution.

For my argumentative purposes here, I do not find it useful to reconstruct the specific procedural steps of the events that gave rise to the Court's ruling. Rather, it is of greater relevance—in my opinion—to bring out how much the (often disguised) assessment of the *factual situation* affected the configuration of the judgment of constitutional legitimacy delivered—on the surface—as the outcome of a comparison/relation between norms. To this end, it will be useful to quote four excerpts from Judgment No. 254, numbered in progression:

1. In this regard, first of all, the absolute character of the provision is highlighted, which indiscriminately (and exclusively) concerns all new religious facilities, regardless of their public or private character, their size, the specific function for which they are used, their aptitude to accommodate a more or less substantial number of worshippers, and therefore their urban planning impact, which can be highly variable and potentially irrelevant. The effect of this absoluteness is that even equipment that has no urban planning relevance at all (such as a small private prayer room) for the sole reason that it has a religious purpose must be cleared by the PAR in advance, and that, for example, members of an association with a

religious purpose cannot meet in the association's private premises to carry out worship activities, without a specific provision from the PAR. On the contrary, any other associational activity, as long as it is not religious, can certainly be carried out in its own venue, which can be freely located on the municipal territory in compliance with general urban planning provisions. From this perspective, the potential urbanistic irrelevance of at least part of the structures invested by the contested provision makes clear the existence of an objective obstacle to the establishment of new religious structures.

2. The differentiated regime should also be emphasized, which despite specific constitutional recognition—mentioned above—of the right to have a place of worship, affects only religious facilities and not other secondary urbanization works, such as, for example, schools, hospitals, gyms, cultural centers. In all cases, these are facilities of general interest which serve residential settlements, which, in a manner not unlike religious facilities, may have greater or lesser urban planning impact due to their size, function and potential users. The fact that the regional legislature subordinates only religious facilities to the constraint of specific and prior planning indicates that the goal being pursued is only apparently of an urban-building nature, and that the objective of the regulations is instead actually to limit and control the establishment of (new) places of worship. And this whatever their size, from the simple prayer room for a few worshippers to the large temple, church, synagogue, or mosque.

The provision by the regional law of the necessary and imperative approval of the PAR together with the approval of the plan affecting the entire municipal territory (the TMP or its general variant) is therefore unjustified and unreasonable, and all the more so insofar as it concerns the installation of religious facilities, which, as seen, given their instrumentality to the guarantee of a constitutionally protected right, should instead receive special consideration.

Significantly, for other facilities of public interest, Lombardy Regional Law no. 12, 2005 not only does not require a general variant of the TMP but does not even always require the partial variant procedure, given that 'the construction of public facilities and facilities of public or general interest, other than those specifically provided for in the services plan, does not entail the application of the variant procedure to the plan itself and is authorized subject to a reasoned resolution of the municipal council' (Art. 9, paragraph 15, of the aforementioned regional law).

3. The provision by the regional law of the necessary and imperative approval of the PAR together with the approval of the plan affecting the entire municipal territory (the TMP or its general variant) is therefore unjustified and unreasonable, and all the more so insofar as it concerns the installation of religious equipment, to which, as seen, by reason of their instrumentality to the guarantee of a constitutionally protected right, should rather be reserved for *special consideration*.

Significantly, for other facilities of public interest, Lombardy Regional Law No. 12 of 2005 not only does not require the general variant of the TMP but also does not always require the partial variant procedure, given that “the construction of public facilities and facilities of public or general interest, other than those specifically provided for in the services plan, does not entail the application of the variant procedure to the plan itself and is authorized subject to the reasoned resolution of the municipal council” (Art. 9, paragraph 15, of the cited regional law, italics mine).

4. At the regional level, in the 1980s and 1990s many regions dictated regulations aimed at treating religious buildings differently from other secondary urbanization works, in order to facilitate their realization, in particular by providing financial contributions (regional and municipal) and raising the minimum endowment required by state regulations (thus, among others: law of the Region of Liguria January 24, 1985, no. 4, on “Urban planning regulation of religious services”; Law of the Piedmont Region March 7, 1989, no. 15, on “Identification in the general urban planning instruments of areas designated for religious facilities. Use by municipalities of the fund derived from urbanization charges”; Law of the Campania Region March 5, 1990, no. 9, on “Reservation of urban standards for religious buildings”).

In excerpt 4, the Constitutional Court traces the attitude of the Italian Regions with respect to the religious phenomenon and emphasizes its *promotional support*, at least up until a certain threshold point in time. In the paragraphs following excerpt 4., the same Court points out that this phase of institutional *idyll* lasted only until 2006: from which time the Lombard regional legislature, specifically, engaged in a sort of *escalation* in the setting of limits and obstacles to the construction of buildings for worship, especially if they belonged to non-Catholic denominations without a government agreement (*intesa*)—already the subject of interventions by the Constitutional Court (in addition to the sentence already mentioned, nos.



63/2016, 195/1993, 59/1958). The constitutional judges do not say so explicitly—though their full awareness shines through—but the change of *course* coincided with the increasing perception of the difficulties of social integration of recently settled denominations in Italy and the progressive instrumentalization of their presence for electoral purposes. Emphasizing the transformative sequence in the attitudes of regional legislators is, however, in itself a way of delimiting or, if you will, projecting the comparison between constitutional and legislative norms into the substantive, contextualizing it in a circumstantial way. This consideration is supported by what is observed in the same excerpt 4. above regarding the tendency “*to treat religious buildings differently from other secondary urbanization works, in order to facilitate their realization.*” Highlighting the propensity to dictate differentiated, special regulations for religion, however, generates a kind of contradiction within the grounds of the judgment itself. As can be seen, comparing excerpt 4. with both excerpts 2. and 3., among the grounds for censure of the regional regulations is, precisely, the differentiation of the regulations and its tendency to dictate more stringent rules and a greater margin for the exercise of administrative discretion in matters of religious buildings than in the construction related to other interests of general importance or, even, other recipients of constitutional protection. Making the difference *in the difference* is precisely the approach that, until 2006, was seen to be an attitude of support.

As much as promoting the construction of houses of worship may be considered in line with the constitution, its accompaniment by more detailed, dedicated and special regulations nonetheless entrenches the institutional work within the patterns of secularization and the *alienation of religion* from the public dimension. Dictating specific regulations in any case means delimiting from *the outside*—since the state cannot define *what religion is*. And delimiting by means of rules is tantamount, precisely, to transforming freedom into an offshoot of its behavioral extensions, in turn qualified by means of the defining technique used for the provision of rights. All this represents an issue, indeed *the most relevant issue*, regardless of whether the intensification of qualifying and procedural interventions previously resulted in a supportive attitude, and only up to a certain historical moment.

When *freedom* is accepted as something that coincides with material behaviors, and morphologies *fixed* through the language of rights, the *semantic caging* of being free has already been legitimized. Whether it is used in a supportive or restrictive sense remains relevant, but becomes, alas,

only a possible byproduct. To be clear, even in supporting one can *restrict* since one can support with respect to *if* and *when* but contingent on *how*.<sup>130</sup> Much like negative freedom and its modes of protection, this way of regulating freedom also works only as long as the semantic-political arrangements and the correlative spatial projections of categorizations implied by them remain stable. Instead, the shadow of power, which is concealed in the apparent neutrality of defining legal discourse and the related references to the objectivity of *facts*, shows itself in its potentially *liberticidal* scope as soon as pluralism, even more so a pluralism populated by heteroethnic voices perceived as *exotic*, appears on the social scene. The Court, in Judgment 254 cited above, does not seem to notice the problem even though, with excerpt 1., it forcefully emphasizes the lack, in the Lombardy Regional Law, of ways of assessing the public interest connoted by the *commitment to understand the factual premises* of administrative action. The positioning as being *grounded in law* masks the fact that the regional provisions, with reference to PAR, concern “indiscriminately (and exclusively) all new religious facilities, regardless of their public or private character, their size, the specific function to which they are used, their aptitude to accommodate a more or less substantial number of worshippers, and therefore their urban impact, which can be highly variable and potentially irrelevant. The effect of such absoluteness is that even equipment that is completely devoid of urban planning relevance, merely because it has a religious purpose (think of a small private prayer room belonging to a religious community)...”

If we consider the Court's words with a sufficiently powerful *pluralistic lens* however, they appear to be affected by a good degree of *ethnocentric objectivism*. Terms such as ‘facilities,’ ‘public or private character,’ ‘size,’ ‘specific function,’ and ‘aptitude to accommodate a more or less substantial number of worshippers’ reveal a tendency to anchor the evaluation of manifestations of religious freedom to material and quantitative elements, as if they bear within themselves a kind of self-evidence and thus neutrality/universality on the basis of which to construct and measure the protection of difference. Yet it is exactly along the lines of this propensity for ‘materialization’ and the assumed consistency and perceptibility in objective terms of freedom, and before that of the *sense* of religiosity, that the most serious problems arise. Problems that local governments are unable to manage guided by the legal lexicon of secularization when *difference* is tinged with otherness and even exoticism.

<sup>130</sup> The considerations proposed by SERGIO FERLITO in this regard (*Diritto soggettivo*, cit.), are fully tenable and point out a legitimate and dangerous risk.

How is it possible to frame the *specific function of* a building realization intended to host religious activities without considering that religion is such a powerful signifying factor that it transfigures the meaning of objects, gestures, words, etc.? Similarly, how to bet on the circumstance that it is the *size* of the building artifact that determines the urbanistic impact, the ability to attract flows of people, without knowing the semantics of individual religions? And, again, how to apply the *public/private* distinction to different religious experiences without taking into account the peculiar way in which religious knowledge, considered in its anthropological scope, punctuates the relations between people's actions and thus shapes the semantic mapping categories of space? To assume that it is sufficient, by analogy, to apply to other religions the *correspondences of meaning* between the secular and religious spheres used historically to coordinate intersections with the spaces of Catholic religion may prove to be a quietly but intensely discriminatory strategy. Above all, however—it must be reiterated—it may be a liberticidal strategy.

Without sufficient awareness of the anthropological and spatial implications of religious difference, it is almost inevitable that local administrators will find themselves echoing the difficulties perceived by native citizens in translating and accommodating *others* in their urban spaces. From a certain point of view, that the regional legislator seeks in the pre-existence of an agreement (illegitimately: see Constitutional Court judgments nos. 63/2016, 195/1993, 59/1958) a compass for managing relations with this *otherness* is even understandable, unless the absence of the agreement is immediately transfigured into an alibi for discrimination and the assumption of obstructionist attitudes deemed to be electorally successful.

It is impossible to avoid discrimination and, before that, mutual intolerance between different ethno-religious groups, and between each of them and the secular sphere, without the creation of a lexicon capable of making mutually comprehensible the ways in which what I have indicated as the *adjacencies of* the building of worship are articulated: namely, the articulations of behavior that it symbolically summarizes and that projecting from it and toward the surrounding urban space. The struggle for what the Court calls *adequate space*, referring to the building considered in its morphological materiality, is instead always a war for the *spaces of adaptation* of people's behavior with all of its subjective, cultural projections within and across the urban context. As noted earlier, almost on an instinctive level the population perceives well the *spatially enlarged and reticular dimensionality* of the problem. When sad practices such as 'pig day' or the distribution of

pork fat on the streets adjacent to places designated for the construction of mosques take place, spectacular *gestures of territorialization* are deployed that aim to function as strategies of deterrence with respect to the social and spatial implications of the erection of a mosque. Inhabitants adjacent to an Islamic house of worship—but the same could be said of a Hindu or Buddhist temple—perceive the risk of a different, imminent *alternative indigenization* of their historical spaces and, therefore, of a possible distress to the ways of life that have until a given moment found their (perceived as) *natural* extension within them. Until practices of translating and reinventing *space* - that is, *making room for religious and cultural otherness* - by inventing new practices of coexistence and spatialization of experience, the *place of worship* (Islamic, Jewish, Hindu, or otherwise) will inevitably maintain a tragic *alienation* from the surrounding world.

In this respect, it should come as no surprise that the 'fact' of *latent discrimination* has already penetrated the articulation of the allegedly steely comparison of norms exercised in the Court's judgments on houses of worship. This is a general and in many ways inevitable phenomenon, already recorded by the doctrine,<sup>131</sup> although too often underestimated. In all likelihood, the very provisions of Art. 72(2) and (5), hit by the constitutional legitimacy censure, would not have reached the threshold of constitutionality review if *religious otherness*, on the wave of migration flows, had not punctured the national urban space. This *factual* relevance, however, is still defective. Just as it has evidently taken into account the phenomena of latent intolerance underlying the media circulation of the epithet 'anti-mosque law' reserved for the Lombard legislation struck down by unconstitutionality, in the same way the constitutional judge should have taken into account the lack of an open approach to translating between diversities in determining the values and general interests to be harmonized in the determination of urban plans in regional legislation. The court did point out that religion was made the subject of exclusive, special limitations that were not explicitly justified through the balancing technique. However, it failed to take into account that the *religion in question* cannot be interpreted on the basis of *objective, neutral semantic evidence* that has not been calibrated to the *cognitive* relationship subsisting between the outer and inner worlds, between the natural sphere and the cultural sphere, between the outer and inner forum. Religious freedom, and not only, manifests itself precisely

<sup>131</sup> E. OLIVITO, *Il fatto nel giudizio sulle leggi*, cit.; M. RICCA, *Sul rapporto tra "ritenuto in fatto" e "considerate in diritto" nel giudizio di legittimità costituzionale in via incidentale*, in, A. RUGGERI (ed.), *La motivazione delle decisioni della Corte costituzionale*, Giappichelli Turin, 1994, pp. 193-247.

through its ability to propose new ways of shaping the categories that shape the world, the meaning of objects and gestures, and thus the potentialities of human action and its modes of universalization. What is more, in the case of religion and its penetrating influence on culture—along with its resilience and capacity to camouflage itself within secular language—the freedom to re-signify the external, social world must also be measured against the imprint left on the common and legal lexicon by historically majority religions in today’s various (supposedly) secularized contexts. The meaning of words—used in the same judgment—such as “schools, cultural centers, nursing homes, gyms, etc.” to denote interests of general scope competing with religion are not culturally immune to religious influence. This is why any attempt at balancing between state regulations that include these words and normative or behavioral patterns derived from *other religions* and made on the basis of their supposedly objective meaning, ‘free’ from religious connotations, is likely to start off *unbalanced* from the outset. What is passed off as *objective, material, empirical*, contains within itself subjective value projections rendered simply invisible by the (indigenous) culture and its familiarity with their articulations. This invisibility, however, subtracts those ‘subjective’ (and thus also religious) coefficients from the operation of semantic balancing and relating that is necessary to ensure their effective neutrality or, at the very least, semantic and cultural equidistance from the universes of meaning of all religions present in the public space. Conversely, the world of *objectivity* generated by *other* cultures and religions is treated as uniquely *subjective, value-based*, and therefore susceptible to balancing. There is no trace, however, in the Lombard legislation of any effort to translate between the *adjacencies* of places of worship as potentially shaped by the semantic and cognitive projections of freedom expressed, or expressible, by different religions. Nor is there any even in the Court’s pronouncements, not even in the reasoning section of a ruling acutely steeped in factual elements and considerations—decisive for the argumentative articulation and outcome of the constitutionality judgment—as 254/2019 is.

Many commentators celebrated the Constitutional Court’s ruling No. 254/2019 as achieving a milestone of freedom. And this especially with reference to the possibility—in my opinion naively inferred from the text of the pronouncement—of opening small places of worship, since for these the Court indirectly excluded the need for urban planning approvals with a complex process and general scope. It was emphatically asserted that

religious denominations and associations *are free to be opened anywhere*,<sup>132</sup> a freedom without controls except, possibly, subsequently—with a view to urban planning needs—that would differentiate the creation of these *building places* from that *conditioned* by the urban impact assessment of large buildings. All this as if one could distinguish between *modes of freedom* on the basis of limits that are external to them, in this case coinciding with the adoption of complex procedural processes. In this regard, it must be said that the *small place* is by no means exempt from limits if it is intended to accommodate certain activities—just think of safety regulations and the liability of those who fail to adopt them.<sup>133</sup> This is without considering—as I have observed—that *materially small* is by no means synonymous with *small in capacity to produce urban impact* in relation to the activities it is capable of mobilizing. A tiny little altar, placed outside some building in the city center, is enough to gather crowds. Sometimes, even immaterial events, such as apparitions, can produce this effect by transforming places—where often, and only later, buildings are constructed to meet already existing phenomena of aggregation or gathering and not as a consequence of the construction of a sacred building. The issue, however, is not only quantitative or demographic. The type of control may depend on the types of activities emanating from different religious imaginaries. As will be seen, the objectifying/externalizing phantom of secular thought saturates—and in some ways clouds—the view of the Western jurist.

The considerations just proposed, however, would risk sounding merely *out of the chorus* if one did not take into consideration the socio-urban *consequences* of pronouncements such as that of the Tuscany Regional Administrative Court and, therefore, indirectly, of the pronouncements of

<sup>132</sup> Thus reports Natascia Marchei in N. MARCHEI, *La Corte costituzionale sugli edifici*, cit. pp. 77-78: “The State’s obligation to make effective the right to have a place of worship expands, therefore, even beyond the boundaries of regional laws to the point of completely overturning, in the Court’s logic, their underlying logic of preventive control. Places of worship can be opened anywhere, as long as they meet concrete and proven standards for good land governance. Here is the reversal: [urban] control, far from being preventive and abstract, is subsequent and concrete. The opening of the place of worship can be inhibited only by proven needs to protect the territory and the flow of people. A small house of prayer, intended to accommodate a small group of worshippers, which does not impact the urban fabric in any way and does not require any special interventions to protect public safety and traffic can be opened anywhere, precisely to guarantee the right to have a place of worship.” (Translation mine)

<sup>133</sup> For this reason, quantitative criteria related to urban impact do not seem adequate to capture the ‘legal implications’ of places where religious freedom is exercised: cf. N. PIGNATELLI, *La dimensione fisica della libertà religiosa: il diritto costituzionale ad un edificio di culto*, in *Federalismi.it*, 24/2015, p. 40 ff.

the constitutional judge on the subject of religious buildings by which the former is inspired. The victory of the Islamic Cultural Association of Pisa may turn out to be only the beginning of a chain of conflicts fomented by a quagmire of antagonisms and polarizations based, precisely, on the *occupation of space* and the absence of translation between the differences that propose to *act* in it. In the local media, it was repeatedly emphasized, following the administrative pronouncement, that the mosque and cultural center will be erected a few hundred meters from ‘Piazza dei Miracoli,’ as if emphasizing this spatial contiguity amounted, in itself, to a kind of unconscionable deformation of Pisa’s urban topography. All this is to say nothing of the antagonism encapsulated in the slogan ‘either the mosque or the stadium’ adopted by many—and not least, through its discriminatory and obstructive manifestation, by the municipal administration. The *probable fact* remains, literally *made* by the disregard for the *adjacencies and spatial projections* of the place of worship outside its strictly physical boundaries, that the building object ‘mosque’ may end up being perceived as an alien body dropped down from a remote elsewhere, and thus as a city *catastrophe*—in the etymological sense of ‘upheaval.’ All this, again, without saying anything about the reactions to the demographic changes that will accompany the urban area as Muslim social activity diffuses into the buildings, business premises around the mosque and cultural center, reshaping them in their social, economic, cultural, aesthetic, etc. meanings. The lack of translation activities between the generative projections, on the semantic and spatial level, of freedom and religious experience could then turn the mosque into the catalyst for conflict, when instead the real *struggle* will be over the signification of the spaces around it in relation to the modes of expression of human behavior that constitute the orthopraxis defended, defused, and communicated within the place of worship.

I understand that some might object that an assessment of the integration efforts of the *mosque’s proximities*, even in terms of categorical relations, was outside the subject matter of the judgment, from the *petitum* as well as from *the thema decidendum* of the judgment carried out by the Constitutional Court in Judgment 254/2019. My response to this possible criticism is once again that the delimitation of the *petitum* depends on a categorization of the *facts*, as well as of the normative and value referents involved in the situation under judgment. Further, this categorization is in itself vitiated by *presumptions of objectivity* rooted in the epistemological assumptions and prejudices of secular thought. And this is because it is not possible to define the *petitum* without first interpreting and translating

into *spatial and material* terms *the significance* that the expression 'house of worship' can assume given a conscious consideration of the projections of meaning that in the name of freedom should be able to emanate from the religious sphere regarding, precisely, the world of *facts*. Redefining *those facts* means calling constitutional norms into question as well. This because, if for no other reason, the different semantic textures corresponding to the imaginaries of different religions and made *perceptible* through their free expression could contain indices of relevance with respect to the set of values and text of the Constitution, as well as the supranational Declarations of Rights. Without an—at least(!)—adequate methodological attitude in the construction of the middle term of the judicial syllogism, however, these indices will be doomed to remain mute, invisible. Such a silencing of the voices of diversity and freedom would—and indeed does—result in an inhibition of the continuity between *facts and constitutional values*. Whereas this interconnectedness represents, in my view, the only path to the realization of genuine pluralism, one that is the result of an effective and reciprocal co-implication between the legal system and social dynamics, between constitutional purposes and the *possibilities for becoming* of the spaces of civil coexistence.

If the legal fact/object at the basis of the judgment, here the Pisa Mosque, were redetermined through a careful consideration of the semantic circularity that unites the factual plane of the situation and the constitutional plane (values/ends), then the very categories of social space that are used to define it and its potential constitutional protection in relation to its 'factual presuppositions' (important even when reviewing the relevance of the question itself) could be reshaped.<sup>134</sup> This possibility of reshaping would be the result of a reweaving of semantic—and thus also pragmatic—spatial relations rather than a mutual limitation between categorical blocks and corresponding 'urban space boxes' defined in essential or conceptual terms—which is how the presuppositions beneath the balancing of interests are imagined in epistemological-cognitive terms.

The reweaving of semantic relations and the corresponding spatial projections of subjective situations is indeed the authentic field of expression of freedom. I would like to emphasize that relational networks, also

<sup>134</sup> In this sense, it is interesting to assess the impact of the constitutional judge's awareness of a situation of latent intolerance for minority religions, and particularly Islam, in the declaration of groundlessness of the exception raised by the Lombardy Region regarding the irrelevance of the question of constitutional legitimacy concerning Article 75, paragraph 2 cited above. Due to space constraints, I refer the reader to point 7 of the judgment C. cost. 254/2019.



considered from a spatial perspective, can accommodate processes of universalization of freedom and the potential for change and renewal inherent in them far more coherently than the conceptual building blocks—placed at the basis of balancing techniques—typically put to use. As I have tried to demonstrate, freedom does not correspond to the morphologically identified behavior that embodies it at individual junctures of experience; or, at least, it cannot be reduced to such behavior. Being free is always more than a specific behavior. A ‘more’ that can also be, morphologically-behaviorally, a ‘less.’ As I noted in a recent paper, ‘going to mass’ during the epidemic *lockdown* could not be considered to be the (*reified* and indefectible) essence of freedom of worship.<sup>135</sup> At the same time, the restriction of this behavior was not actually a limitation of freedom of worship. And this for the simple reason that the safeguarding of one’s own and others’ life and health is not something that stands in opposition to religious freedom, requiring a balancing of differing constitutional ends. Rather, safeguarding health was and is integral to the expression of every religion—from Catholicism to Islam to Judaism to Hinduism, and so on. During the pandemic, there was an almost compulsive staging of claims made by many religious leaders to the faithful directing them *to avoid* those behavioral patterns undertaken in the name faith, and *normally* ascribed to religious freedom, out of consistency with the true religious meaning and moral projections the faithful wished to invoke through them. What, after all, is a more authentic expression of religious freedom: going to Mass? Or, rather, refraining from doing so out of love for the lives of others, as well as out of respect for one’s own?

The answer to these kinds of questions depends on how the processes of semantic universalization that distinguish freedom from power are formed. The search for meaning and its pragmatic projections is the generative core of freedom. In the absence of processes of universalization that search would, in effect, become indistinguishable from expressions of pure power. Any given meaning depends on the simultaneous and contextual existence of a network of implicit, often invisible—but no less relevant—contextual conditions. To give a material example: what makes it possible to designate something a ‘drinking glass,’ independently of the many factors that ‘call’ it into being? Would a ‘glass’ exist without bodies that require drinking at intervals, and to the purpose feature mouths, arms and hands, and the necessary movement capacities? What about the existence of physical conditions (including gravity) that make water remain stable in the glass but also

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<sup>135</sup> See M. L. VAZQUEZ, *Antigone’s Protest and the Covid Crisis. Freedom astride Faith and Health*, in *Calumet - Intercultural Law and Humanities Review*, 11/2020, pp. 26-37.

travel down the throat, of the existence of materials that can be worked into shapes that contain liquids in an impermeable way, etc.?' To say 'glass' is to evoke the summary of all of these variables. Of course, under *normal* conditions, everything *else*, all that relational ocean, can be taken for granted and semantically settled. Nevertheless, it lies beneath both the meaning of the term and the category 'glass' and the experience that goes with it, that is summarized and, in a sense, predicted by it; it keeps it stable. All it would take is a change in the boundary conditions, that is, in those underlying relations—just ask an astronaut—for the glass to no longer correspond to its 'meaning,' to no longer be that *thing* we call a 'glass.'

The exercise of freedom and its dynamics are integral to the possible change of relational conditions; otherwise, there would be no freedom. If it were identifiable with a landscape of meanings and experiences codified once and for all, endowed with a kind of ontological fixity, freedom and its transformative, and thus also cognitive, meaning would simply no longer exist. This is why universalization processes are relational re-modelings of categorical boundaries generated from within them and not operations of mutual limitation between blocks of already predefined categorical/spatial essences. Put differently, the relation is not external to a meaning already given once and for all, but internal to its morphological structure, its genetic axis.<sup>136</sup> In this sense there is no meaning, value, or end that exists 'objectively and in isolation from others.' And for this same reason the process of universalization that must always accompany the petition for semantic innovation intrinsic to the manifestations of freedom concerns *all* connections of meaning, and thus also the pragmatic-spatial ones, set in motion by the demands for innovation, for the expression of the creative capacities of human beings.

To return to the issue of *places of worship*, the demands for the reinvention, renegotiation, and reshaping of the category and spaces necessary for religious needs coming from newly present faiths and stemming from the expression of their freedom cannot be evaluated separately from the way they reshape the meaning of objects, gestures, and activities and the way these meanings prove themselves relevant with respect to other constitutional values other than religious freedom. The *fact* to be regulated, therefore, along with its socio-legal meaning, can no longer be assumed and treated as a mere presupposition of legal qualification. It must instead be (and must be conceived as) the result of an operation of qualification

<sup>136</sup> To this effect, for cognitive, philosophical, and inherent aspects of the general theory of law, I refer to M. RICCA, *How to Undo (and Redo) Words with Facts*, cit..

and the specific way it is *mobilized*, so to speak, by the semantic networks forged by the actions of individuals and the rearticulation of meanings that is, precisely, an expression of freedom.

To further illustrate the argument, I will try to trace the issue back to the Islamic faith, which constituted the *de facto*, albeit *unspoken*, *referent* used by the Constitutional Court in Sentence 254/2019 in sifting through the discriminatory implications of the Lombardy legislation. In practical terms, it may happen that a Muslim ascribes to a gesture, a *space*, or an object (such as, for example, a building) meanings that do not correspond to those ordinarily attributed to it by so-called secular thought or that of the majority religion with which secular law has aligned itself by indirectly attracting—through the legal technique of referral—the relevant categorizations into its sphere of meanings.<sup>137</sup> If this happens, then the semantic indices articulated by the Muslim will have to be universalized by taking into account the possible profiles of the deservingness of their protection with respect to the whole arc of constitutional values and purposes and the mutual relations that structure their scope from within and constitutively. If this process of relational universalization were conducted in an open manner and without aprioristically and undisputedly favoring pre-existing categorizations, already settled relational patterns, and expressions of majority culture, then it may happen that a gesture or object categorized up to a certain point in a certain way, precisely because of its relevance with respect to certain constitutional ends, turns out to be *something else*. This means that that *gesture* or *object* will be *subsumed* within different categorical schemes chosen in relation to the relevance of the *fact* with respect to different axiological and normative parameters. Thus, for example, if the *gesture of solidarity* was previously qualified as outside the *domain* of religion on the basis of the Catholic view of the distinction between the sacramental and the theological-moral ‘moment’, later endorsed by the faith/reason and public/private distinctions of secular law, on the contrary, it might be seen to have an entirely different meaning, should the theological and anthropological signification of solidarity within Islam be taken into consideration.

The basic issue is that the anthropological-cultural meanings articu-

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<sup>137</sup> I refer again to RICCA *How to Undo (and Redo) Words with Facts*, cit., for the systematic analysis of the implications related to how the descriptive parts, otherwise called ‘phrastic’ (see R.M. HARE, *The Language of Morals*, Oxford University Press, Oxford, 1952.), of the legal norm are indebted to the common language and cannot be considered as integrally self-referential to the legal dimension, according to the Kelsenian dictum already mentioned that “law makes its own facts.”

lated by religions are not semantically and semiotically incommensurable with respect to those present in the so-called secularized circuits and, therefore, also in the legal circuits corresponding to them. To be clear, I do not mean to say that within religious universes there are *rational* profiles somehow equivalent to or reducible to the same patterns of secular rationality; nor that by virtue of this rationality—as some authoritative voices in political philosophy<sup>138</sup> argue, in my opinion in a heavily ethnocentric way—some aspects of the universe of religious discourse and experience can be considered translatable, in the sense of *compatible*, with the secular dimension *without contaminating it with irrationality*. On the contrary, my point of view is that religions are capable of elaborating categories of meaning susceptible not so much to be translated by equivalence but, on the contrary, to be metaphorically translated and creatively recombined<sup>139</sup> with the categorical schemes of the secular domain. In this regard, it must be emphasized that it is not enough to attach the *label* of religion to behaviors, objects, beliefs, words, etc., in order to legitimize an attitude of ignorance or segregation, whether semantic or spatial, of their implications of meaning in the name of an undefined *irrationality* of religious discourse and imagery. This would be tantamount to endowing the conformation of certain categories and values present in certain secular cultural circuits—moreover, by no means exempt from the imprints left on them by the corresponding religious traditions<sup>140</sup>—into a kind of universal parameter to be used as a unit of measurement for the social legitimization of any dif-

<sup>138</sup> See, again, J. RAWLS, *Political Liberalism*, cit.; J. HABERMAS, *Between Facts and Norms: contributions to a discourse theory of law and democracy*, The MIT Press, Cambridge MA, 1992; C. LABORDE, *Liberalism's Religion*, cit., among many others. In this regard, for an overview, M. HUNTER-HENIN, *Why Religious Freedom Matters for Democracy: Comparative Reflections from Britain and France for a Democratic 'Vivere Ensemble'*, Hart Publishing, Oxford, 2020.

<sup>139</sup> On the translation of cultures and legal orders as a metaphorical process, see M. RICCA, *Oltre Babele. Codici per una democrazia interculturale*, Dedalo, Bari 2008; Ricca also reconstructs the process of forming the middle term of the judicial syllogism as an activity of translation: see, in this sense, among other texts, M. RICCA, *Culture interdette. Modernità, migrazioni, diritto interculturale*, Bollati Boringhieri, Turin 2013; ID. *Perpetually Astride Eden's Boundaries* cit. On the fundamental role of 'dialogue' in relation to interculturality I refer to M. D'ARIENZO, *Pluralismo religioso e dialogo interculturale. L'inclusione giuridica delle diversità*, Pellegrini Editore, Cosenza, 2018; N. COLAIANNI, *Diritti, identità, culture (tra alti e bassi giurisprudenziali)*, in *Questione giustizia*, 2018, although the idea of an 'intercultural use of law' articulated by the latter author is different from the approach I follow. See also A. FUCILLO, *Le proiezioni collettive della libertà religiosa*, in *Stato, Chiese e pluralismo confessionale*, online journal <<https://www.statoechiese.it>>, 19, 2019, p. 7 ff.

<sup>140</sup> In this regard, see M.L. VAZQUEZ, *Secularisms*, cit.

ference. In short, this would be nothing less than the denial of any genuine pluralism. On the contrary, the way in which religions categorize objects, gestures, values, ends, may have relevance for a plural articulation of secular categories that present possible continuities between their constituent elements and those involved in the religiously based categories. From this perspective, religious freedom is configured, precisely, as the legitimizing parameter for the passage and recombination of some of these elements with those present in secular categories—and, in some ways, also in the opposite direction, that is, from the secular domain *toward religious thought and experience*.<sup>141</sup>

The ways in which Islamic solidarity is manifested, for example its implications for the way objects, gestures, etc. are used and conceived, might legitimately and systemically affect ways of thinking about secular solidarity, if only because the consequences of the behaviors enacted by Muslims might turn out, if *properly translated metaphorically and spatially*,<sup>142</sup> to be relevant and deserving of protection in relation to the semantic spectrum of secular solidarity. At the very least they may worthy of consideration. These processes of inclusion and metaphorical translation affect the perimeter of secular categories—in this case, the principle of solidarity—and the other constitutional values and purposes placed in relation to it, changing it from within. Thus the resulting rewriting of the semantic spectrum of secular solidarity would, in turn, reshape the relations between its space of manifestation and that of religion. This would mean, likewise, that the concrete spaces of the relationship between the religious freedom of Muslims—and religion in general—and those spaces intended to accommodate the projections of values and ends *other* than religious freedom would *also* be transformed.

To explain further, and based on the dynamic just described, the parts *adjacent* to a Muslim religious building and dedicated to behaviors related to the expression of Islamic religious solidarity would be qualified *not only* as purely religious but *also* as pertaining to an inclusive and plu-

<sup>141</sup> Every religion *adapts*, despite the notion of truth on which it is based, to the cultural contexts in which it extends and is practiced; a finding that also applies to religious rights. In this regard, see S. FERRARI, *Introduzione al diritto comparato delle religioni*, Il Mulino, Bologna, 2008, and the critical approach to the interpenetration of religious and state rights in the articulation of legal comparison, esp. Ch. II.

<sup>142</sup> Which, then, are two aspects of the same activity. *Metaphor* comes from ancient Greek and means precisely *displacement in space*; not surprisingly, in modern Greek, the term μεταφορά means ‘moving.’ We can take this as an indication of how ‘categorical domains’ and ‘spaces of experience’ represent two continuous and almost co-extensive dimensions.

realistic reconsideration of the constitutional value of solidarity. Buildings dedicated to listening and personal support found, for example, in some mosques in Istanbul, have been transformed into networks of solidarity and psycho-social support, inspired by the function of *irşad*,<sup>143</sup> open to all citizens regardless of faith affiliation; these were established well before the recent pro-Islamic turn imprinted on the Turkish legal system, which was previously based on the ideals of secularism promoted by Mustafa Kemal Atatürk during his rule. Delimiting and qualifying the presence of such circuits of social experience on the urban territory by balancing it with other values of general and constitutional interest would prevent them from being pigeonholed within the traditional categorical cage of *places of worship*, as if it were a *de facto element* defined in rigid terms by its outward morphological characteristics related to its primary qualities (at the core, as noted, of the epistemology of secularization and followed by the outwardness of modern law). On the other hand, if their religious relevance were denied and they were qualified *in factual terms* as social welfare centers entirely unrelated to the legal regulation of religious freedom, this too would be a polarizing interpretation, inspired by an aprioristic conception of the religion/law, religious/worldly dimensions distinction, and therefore defective in grasping their constitutional significance, which instead crosses *categorical* and *values based* circuits.

When the Constitutional Court in Judgment no. 254/2019 reproached the Lombard regional legislature for failing to give due consideration to the harmonious composition of all values and interests of general scope including religion, it could and should have referred to similar processes of the integration of differences to be conducted on the semantic-spatial level. This has not, however, been the case. On the contrary, *harmony* in the urban dimension has been invoked but thought of only as the result of the cross-affixing of limits to each value, defined in essential and reifying terms, and the outward rights and behaviors that branch out from each general value and interest as extensions or demonstrations. In the end, *place of worship*, even in the Court's jurisprudence, remains uncritically assumed as *factual evidence* to be defined by presumptively objective categories, thus semantically already prepackaged. However, it is precisely on this front that the entry of *fact* into the analysis of legal legitimacy is insufficient and inadequate. The Court did not push its hermeneutic reconstruction of the

<sup>143</sup> See, regarding *irşad*, traditionally understood as "the act of guiding and pointing out the righteous path and main mission of religious authorities" now extended to a psycho-social support tool for women at mosques, in C. MARITATO, *Women, Religion, and the State in Contemporary Turkey*, Cambridge University Press, Cambridge, 2020, 204 ff.

situation under judgment far enough forward and—so to speak—*within* the plural character of the world of *facts* (meaning its categorical and experiential spaces and dynamics) alongside the petition for their semantic redefinition, which emanates from the petition for liberty.

The *fact* to be evaluated for the purposes of the constitutional legitimacy of laws should be, I believe, the result of a genuine process of relational transaction between the semantic spectra of values and meanings articulated and reshaped by the expression of the different voices of freedom in the semantically and axiologically networked space of coexistence. The *house of worship* should first move *out of its own location*, that is, out of the categorical boundaries assigned to it by the syntheses between subjective and empirical dimensions formed by pre-existing categories and sedimented by history in the lexicon of the common language of each cultural and political context. This *dislocation* should be ensured precisely by the possibility of mirroring itself in constitutional values and their multifaceted recombination with respect to the indices of semantic relevance that inhabit the *fact*, indices that should be reconfigured in their potentialities of meaning by difference and the related petition of freedom. Only after this *dis-location* and subsequent *re-location* within a renewed categorical spectrum, drawn by a recalculation of the underlying relations of meaning to constitutional values and ends and *set in motion* by the *new fact* (which is also a *fact of freedom*), would it be possible to take it as *objective*, albeit—let it be clear—only in interlocutory terms. In my opinion, this process of semantic redefinition cannot be considered *extraneous* to the judgment of constitutional legitimacy and the assessment of the merits of the question, but on the contrary *internal* to it and to the Court's work of clarifying the object of the judgment, also in relation to its possible systematic and social implications.

In examining the question decided in Judgment 254/2019, the Court could and should have assessed whether the Lombard regional authorities had previously undertaken a work of interpretation and translation of, for example, the Islamic idea<sup>144</sup> of manifestation of worship and the means of expressing it (including in the domain of building construction). And it should have done so by taking into account its multiple implications with respect to the whole arc of constitutional values and public interests to be realized in urban space. Only in this way could an adequate vision of the significance of the buildings required by each religious denomina-

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<sup>144</sup> ...but the discussion can be extended to many other minority religions and their axiological/semantic peculiarities.

tion (whether of the 'majority' or 'minority') have been developed by the municipal authorities called upon to implement the regional law. If all this had been done, the result would have been to re-perimeter the subject of the judgment on the *compatibility* of the legislative dictates with the constitutional meanings related to the expression *place of worship*. The Court, in short, could have considered the absence of effective processes for the pluralistic and relational articulation of the semantics of urban space and the general and constitutional-ranking interests involved therein, to render the regional legislation constitutionally illegitimate.

There is little doubt that focusing on the possible discriminatory uses of the PAR or the PRGT already constitutes a relevant and appreciable element, but it does not at all exclude an ethnocentric and implicitly discriminatory exercise of administrative discretion until it is made clear that the balancing of general interests must be accomplished through a process of translation and semantic reconfiguration of the meanings attributed to *facts* by law. An activity—I reiterate—to be carried out in light of the *constitutional implications* of the semantic difference implied by the exercise of freedom and the cultural and, therefore, constitutional impact of that difference. Of course, this holds only if the anti-discriminatory value attributed to the interventions of the Constitutional Court is not to be converted into the prelude for a denial of the religious diversity and freedom of minorities, as well as of *non-Christian* religions, even with reference to the plane of their meanings and concrete actions in *urban space*. In this sense, a defensible interpretation of the constitutional pronouncements examined here would render the sequence of jurisprudential victories traced back to religious freedom not only a Pyrrhic victory but, worse, a kind of poisoned apple capable of *ossifying* the pragmatic-spatial projections of that same freedom by enclosing them within allegedly objective categorical boundaries and, for that very reason, legitimized to remain immune to difference.

In the aftermath of Judgment no. 254/2019, many voices in public law—constitutionalist and ecclesiastical—drew a kind of linguistic-normative inference from its reasoning. This led to the assertion that as a result of this pronouncement, one could speak of a 'right to the house of worship' or, even more emphatically but still less pluralistically, a 'right to the temple.'<sup>145</sup> In my view, interpreting freedom of worship, itself a projec-

<sup>145</sup> See A. LO CALZO, *Il diritto ad un luogo di culto nel rapporto tra ordinamento interno e ordinamento sovranazionale*, in *Rivista del Gruppo di Pisa*, 1/2020, pp. 28-65; N. MARCHEI, *La Corte costituzionale sugli edifici di culto* cit.; but already, well before the ruling, G. CASUCELLI, *A chiare lettere: Il diritto alla moschea, lo Statuto Lombardo e le politiche comunali: le incognite del federalismo*, in *Stato, Chiese e pluralismo confessionale*, online journal <<https://>



tion of religious freedom, by unpacking or parceling it out into so many rights, including a *right to the house of worship*, sustains a defective view of freedom and the function of normative and semantic hetero-integration that contemporary constitutionalism attributes to it. In the theoretical and hermeneutical perspective I have adopted, there is no ‘Rolodex of religious rights.’ There is only religious freedom, and it must be able to be exercised through the development of a particular process: a transactional, inclusive, relational and pluralistic adaptation between the meanings articulated by different faiths with reference to both *religious action* and to other values, including other constitutionally protected freedoms. The *right to the house of worship* seems to me to be yet another invention by jurists who seem to crave the cataloging of ‘figures of rights.’<sup>146</sup> This approach risks transforming a simulacrum of solid protection of subjective prerogatives, achieved through objectifying definitions with stringent semantic relevance constraints (i.e., the determination of a new right) into a conceptual cage for possible attempts at re-semanticization coming from new (or newly present) religions, which are endowed with lexical and cognitive heritages as distant from those of the majority religion as from the secular fabric, itself historically influenced by the latter (in Italy, Catholicism). On the other hand, it is nothing new that the reification of both freedom and the relational dynamics of its meanings, through their translation into the lexicon of rights, can open the door to an antagonistic use of its extensions, already recognized and realized at the social level, indifferent to authentic universality, and inevitably partisan. When this happens—and it happens often and not only in Italy—the discourse of and about rights fuels a

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www.statoechiese.it>, 2009.; N. MARCHEI, *Il “diritto al tempio”. Dai vincoli urbanistici alla prevenzione securitaria. Un percorso giurisprudenziale*, Editoriale Scientifica, Naples 2018; in open contrast to the identification of the ‘temple’ as the prototype of the place of worship in relation to the multiple projections of the use of sacred spaces by different religions see R. MAZZOLA, *La questione dei luoghi di culto alla luce delle proposte di legge in materia di libertà religiosa. Profili problematici*, in V. TOZZI, G. MACRÌ and M. PARISI (eds.), *Proposta di riflessione per l’emanazione di una legge generale sulla libertà religiosa*, Giappichelli, Turin, 2012, p. 207.

<sup>146</sup> For those wishing to measure themselves against the consequences of overexpansion in the production of analytical distinctions corresponding to sub-branches of rights connected to unitary values/interests and their consequences, almost by a heterogenesis of ends on legal certainty, it may be useful to confront the idea of ‘existential damage’ and its tortuous classifications (and declassifications). In this regard, with specific reference to the judgments of the Supreme Court of Cassation Civ. 8827 and 8828 of 2003 (and the reconstructive warnings contained therein), on the one hand, and of the Constitutional Court, No. 233/2003, on the other, see G. TRAVAGLINO, *Il danno alla persona tra essere ed essenza*, in *Questione giustizia*, 1, 2018, p. 118 ff.

rhetoric of freedom that makes its own mystification and discrimination to maintain prerogatives of power already acquired by socially dominant subjects (the United States is the cradle, in a sense, of this defensive and pseudo-guaranteed use of freedom).<sup>147</sup> And, indeed, it is at least misleading to speak in universalistic and objectifying terms of a *place of worship*, when this category is instead forged—in its *factual* elements—on the basis of the Catholic model and, above all, takes as its axis of categorization the division between the worldly and religious spheres proper to the modern Western tradition, and not only; this axis of categorization is constructed on (incomplete)<sup>148</sup> processes of differentiation from the theological-cultural circuits of Christianity.

In conclusion, and to summarize succinctly what has been expressed so far, I would like to emphasize one last time that problems of semantic-legalistic hypostatization/reification—such as that connected with the category 'place of worship'—appear particularly relevant when talking

<sup>147</sup> In this sense, the distinction, proposed by Luigi Ferrajoli, between a principalist constitutionalism and a garantist constitutionalism I think can silence and hide, beneath the defining surface, the practices of rhetorical instrumentalization of textualism and originalism destined to mark, with an egregious heterogenesis of ends, the triumph of the (pseudo)certainly of the legal word and the precipice into the most catastrophic uncertainty of its meanings. See L. FERRAJOLI, *Costituzionalismo principalista e costituzionalismo garantista*, in *Giurisprudenza costituzionale*, 2010, pp. 2771 ff. I reiterate that the recent U.S. Supreme Court ruling on abortion constitutes the epitome of the partisan use of textualist, definitional, hyper-jurist arguments in configuring the meaning and scope of constitutional freedoms. Available at <[https://www.supremecourt.gov/opinions/21pdf/19-1392\\_6j37.pdf](https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf)>. I clarify, in this regard, that my theoretical and methodological approach, although it differs from guarantee positivism, is not ascribable to the currents of so-called neo-constitutionalism, if only because the circularity between the semantics of facts and the semantics of norms (including constitutional norms) is entirely foreign to Ronald Dworkin's thought (see, expressly, R. DWORKIN, *Law's Empire*, cit. p. 11 ff.). On neo-constitutionalism, with specific regard to Ferrajoli's position, see the lucid essay by Giorgio Pino, G. PINO, *Principi, ponderazione, e la separazione tra diritto e morale. Su neocostituzionalismo e i suoi critici*, in *Giurisprudenza costituzionale*, 1, 2011, p. 965 ff.

<sup>148</sup> On the incompleteness of the secularization process, particularly in the world of law and beyond the boundaries of Schmittian political theology, again, M. RICCA, *Pantheon*, cit.; G. ANELLO, *Teologia linguistica e diritto laico*, Mimesis, Milan, 2016; and M.L. VAZQUEZ, *Secularisms*, cit.; J. CASANOVA, *The Secular, Secularizations, Secularisms*, in *Rethinking Secularism*, M. JURGENSMEYER, J. VAN ANTWERPEN and C. CALHOUN (eds.), cit.; T. ASAD, *Formations of the Secular: Christianity, Islam and Modernity*, Stanford University Press, Stanford, 2003. For an overview of general problems occurring in the protection of religious freedom in European countries and specifically in the Italian context, see I. ZUANAZZI, M.C. RUSCAZIO, M. CIRAVEGNA, *La convivenza delle religioni degli ordinamenti giuridici*, cit.

about religious freedom precisely because the dichotomy between external and internal forum on which the whole secular epistemology of modernity<sup>149</sup> is built is expressed within it to the highest degree. The internal and the external subsist, however, with regard to all forms of freedom and to freedom itself in general, understood as an encompassing category. This is because without a channel of communication between the outer dimension of objectivity and the inner dimension of subjectivity, as well as between the public and private spheres, freedom conceived as a factor of heterointegration of the legal order would simply not exist, thus nullifying, at a stroke, both the guarantor and emancipatory meanings that the distinction between those dimensions and spheres of experience assumed in the gestational stages of modern law. For this reason, I believe that to speak of a *right to the place or house of worship* is tantamount to speaking of something that not only does not exist but is contrary to the constitutional dictate—at least as long as one intends to interpret Article 19 of the constitution as providing for a freedom and not for a right or sequence of rights, in spite of the contradictory tenor of its wording, beginning with the incipit: “Everyone has the *right* to profess *freely*...” As fond as jurists are of the formula the *right to freedom*, exactly that formulation confronts the absurdity of *configuring* a right whose content should be *freely* determined. In the logic of positivism—unless one wants to radically critique it—if a right is not deontically defined *at least precisely enough* by a legal sentence and does not have concrete semantic referents corresponding to objective and verifiable elements in the sphere of external experience, then one can never properly assume that sentence to have a right as its object. For this reason, as long as one moves within that terminological horizon and within that *hermeneutic mentality*, freedom cannot be classified as a right. That is, not if it is cordoned off—as it seems democratic-liberal constituents have done and continue to today—into a space of its own, that is semantically and linguistically distinct from rights. In short, the expression ‘freedom and constitutional rights’ is not an endian, but rather a terminological pair indicating sets of subjective prerogatives that are each distinct and different from the other.

On a final note, I would like to return to the paradigmatic nature of the Pisa Mosque case. I think a kind of instructive significance can be found in the almost metonymical identification—perhaps more than coincident-

<sup>149</sup> On the idea of an ‘epistemology of modernity,’ see W.D. MIGNOLO, *Enduring Enchantment: Secularism and the Epistemic Privileges of Modernity*, in P. BILIMORIA and A.B. IRVINE (eds.), *Postcolonial Philosophy of Religion*, Springer, Dordrecht, 2009, pp. 273-292.; in a more markedly cognitive sense, M. RICCA, *Otherness*, cit.

tal—of the city of Pisa with the ‘Tower of Pisa’ in the Piazza dei Miracoli. The Tower of Pisa is a world-renowned monument because for centuries it has been on the *verge of falling*... It seems constantly in the process of *moving out of place*, as if its adjustment to space has never been resolved, has never become final, objective, a *static, stable fact, devoid of precariousness*. Similarly, in my view, the Pisa Mosque, if it is to be consistently rooted in the range of expressions of religious freedom, cannot be simply contained in the rubric ‘house of worship,’ included in the definition of a right. This is because this categorization, based on the assumption of an objective, self-evident referent with stable semantic-pragmatic boundaries, would obscure, and thus exposed to preconceived and silent perceptions, precisely its own unique qualities—because they are the projection of a freedom that includes diversity—that are intrinsic to words/experiences such as ‘mosque’ or ‘Islamic house of worship.’ My hope is that the analogous and spatially reciprocal migration *outside* the pre-established and normalized categories of history and *cultural normalization* processes proper to both the Tower *and* the future mosque-intended-as-a-means-for-the-expression-of-religious-freedom will not remain without consequences, both cognitive-cultural and legal. In speaking of consequences, I have in mind both the imminent—hopefully—advancing of the two building projects in a relationship of spatial proximity within the urban fabric of Pisa, and the interpenetration and mutual translation of the *adjacencies*, the implications on space and city experience, of both. Without a rewriting of the overall space of experience generated by the presence of the Tower and the entire Piazza dei Miracoli, the planned mosque and its semantic-spatial ramifications, it will not be possible to compose into a *balanced and harmonious* whole—which is precisely the purpose of urban design entrusted to local institutions—their (supposed) juxtaposition as fixed and only mutually limited blocks of meanings. If that transactional rewriting is absent, the conflict with the stadium, the war between religion and the game of soccer, will be waiting around the corner as an icon of intolerance, ready to explode and foment resentments and discriminatory attitudes, as well as electoral instrumentalization, at any time. If the different categorical and experiential spaces are not translated into one other, so that by interpenetrating they can create an intentionally generated *third space*, then the very sequence of Constitutional Court rulings on religious buildings—as mentioned earlier—may trigger a sequence of clashes sooner or later destined to erupt and endure over time within the Pisa territory as elsewhere. Once again, rather than a triumph of freedom against prejudice and discrimina-

tion, those rulings could turn into the (unwitting) hotbed for its belligerent use, employed as a weapon to fracture the freedom of others. This condition is sadly represented by reversing the much-invoked Kantian formula—which, incidentally, already contains a reference to the continuity between categories and space—namely, ‘my freedom ends where the other’s begins,’ into the far more sinister and not at all equivalent slogan ‘the *other’s* freedom ends where *mine* begins.’ Only a polyphonic re-composition of the instances of inclusion of difference rooted in freedom and inspired by the plurality of constitutional values and their incessant mutual mobilization and signification, only a commitment to the practice of law oriented toward it, will be able to generate shared urban spaces, open to processes of universalization and capable of nurturing an equitable, non-exclusionary *sense of place*. A place that could be a city for everyone.

## Chapter III

### *Born again. The Necessary Renewal(s) of Law and Space*

SUMMARY: 1. The historical roots of religious and secular space struggles and their dialectical outcomes – 2. Multi-faith misconstructions? Translating secular surfaces, religious bodies – 3. *Simultaneum mixtum* reimagined? A view towards an intercultural spatial justice.

#### *1. The historical roots of religious and secular space struggles and their dialectical outcomes*

In the prior chapters, I have tried to introduce and then show through an in-depth case study some of the struggles that the intersection of space, place and religion undergo in modern secular society, with a particular emphasis on Italy. Chapter 2 examined some of the specific normative challenges that arise when urban regulation and religious exigencies face off. If we are to attempt to think more broadly about possible solutions to these kinds of problems in Italian urban centers and beyond, it may help to widen the lens of analysis. The roots of the religious experiences examined thus far (Catholicism and Islam) have ancient histories, as do the European city centers in which the conflicts addressed have occurred. Conflicts between religious experiences and secular state entities existed long before modern eruptions of pluralism. My intention here is not to offer any kind of comprehensive detailed historical analysis across the centuries, as this would take us off topic. Instead, I would like to offer a kind of abridged recounting of the key historical moments that inform my understanding of secular/religious conflicts in European urban spaces today. Returning to the origins of these centers and conflicts, specifically to the medieval period can, I believe, offer up insights germane to this analysis.

What, then, did the relationship between state and religious authorities regarding space management look like in the Middle Ages? One historical study in the medieval history of state and religion in Europe offers a compelling and informative view.<sup>150</sup> To begin with, the contentiousness

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<sup>150</sup> The following section relies heavily on historian BARBARA H. ROSENWEIN's fascinating

in the division of space repeatedly observed so far in this text was not the norm. Indeed, the management of relationships between the rulers of religious and state domains and the mapping of the space they each occupied were consensual. Demarcation lines and topographies were formed in response to rights claims and demands for justice. Fundamental to this situation was the shared understanding of a unified legitimizing divine source of power. In short, both state rulers (the king) and religious rulers (the pope) were legitimated in their authority, whether temporal or spiritual, by God. In the 1000's in Europe, the Church was considered by all to be responsible for interpreting the execution of societal justice based on moral theology and divine law. This extended to space management, in that the Church could define and limit space, even imposing its jurisdiction on state authorities in the form of what have been called immunities, exceptions and rights of asylum.

Asylum is perhaps the most straight-forward and most ancient of these as it can be traced back to the time of the Roman Empire. The first positive law of asylum has been identified in Ravenna in 419 and it officialized practices of protecting refugees (in the broadest sense of the term, those seeking refuge for any number of reasons – financial, political, etc.) that had long taken place in churches and monasteries. In offering asylum, churches became places “where earthly law was suspended.” Most important to this analysis, the law of asylum “recognized the violation of the church’s sanctity (sanctitas) as a sacrilege (sacrilegii crimen)”.<sup>151</sup>

In a similar vein, immunities as designated by the Church were declarations that marked off specific territory as sacrosanct and therefore un-touchable, that is, unsusceptible to any kind of breach such that, “...no one of whatever condition or power might dare make an attack [invasio], whether big or small, or commit arson or pillage or robbery ... or commit homicide or wound another.”<sup>152</sup> These declarations of immunity followed liturgical rituals wherein alters were consecrated and masses were celebrated, fortifying the acts of jurisdiction. From a modern secular point of view, it may seem like a categorical mistake; a religious figure should not be allowed to engage in the political act of marking off secular territory. The key to understanding this, however, lies in the shared belief on the part of religious and secular authorities in a natural divine law. The moral imperatives justifying these acts, aimed at creating spaces of protection for

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study, *Negotiating Space. Power, Restraint, and the Privileges of Immunity in Early Medieval Europe*, Cornell University Press, Ithaca, 1999.

<sup>151</sup> ROSENWEIN, cit. p. 38.

<sup>152</sup> Pope Urban II's declaration at Cluny cited in ROSENWEIN, cit., p.1.

people, were grounded in a shared belief in justice derived from divine law. Secular powers were bound to respect this law because it was the same law responsible for granting their authority. This made church-declared immunities expressions of equity rather than privilege. Furthermore, the penalty for violation of such immunities was excommunication, which again affected everyone equally, in a world in which losing the blessings and spiritual protections of the church meant an eternity of damnation.

Exemptions were another kind of tool that went hand in hand with immunities. They were chameleon-like regulatory instruments used by all authorities—secular and religious—to prevent entry into certain areas for purposes of tax collection, for example. These broad-use social instruments were used to establish alliances and re-organize land use through declarations that marked some areas as off-limits.<sup>153</sup> Exemptions applied within strictly religious realms as well, such as those which freed monasteries from diocesan episcopal oversight or allowed bishops to bypass local authorities in lieu of direct papal supervision. It is interesting to note that the Latin word corresponding to the English ‘exemption’ was *libertas*, which, of course, had numerous definitions beyond those subsumed in ‘exemption.’<sup>154</sup> The idea of a claimed and structured freedom underwritten, so to speak, by divine authority, was part of a world which we might call ‘enchanted.’ Borders identifying lands as holy, whose infringement resulted in personal bodily-moral consequences affecting both spiritual and temporal powers, constituted a world in which places and spaces materialized the religious dimension of human experience. This was not to last, however. Indeed, the very declaration of peace and protection for his Catholic subjects made by Pope Urban II (cited above) in 1095 was followed just one month later by his invocation for ‘wresting’ the land of Jerusalem for Christian ‘ownership’, also known as the launching of the Crusades.<sup>155</sup>

Again, this is not the place for a detailed recounting of the half century of religious wars that followed Urban II’s declaration. The relevant observation here is that over time the unified Catholic source of legitimation of temporal power collapsed under the weight of conflicts between religious denominations, perhaps reaching a kind of apex in the Protestant Reformation. Splintered religious affiliation became a factor of division and ultimately persecution. Denial of rights and freedoms were based on

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<sup>153</sup> *Ibid.*, p. 8.

<sup>154</sup> *Ibid.*, p. 4.

<sup>155</sup> ROSENWEIN, *cit.*, p. 1.



denominational differences as well as in the rifts between the religious and the secular. Intolerance of Others was given religious legitimacy, and a long period of warfare was driven by the pursuit of confessional security and political gain across Europe. Royal sovereignty in England famously claimed autonomous consecration with Henry VIII's break from the Catholic church and founding of the Church of England, and wars were fought with the goal of colonizing space for religion.

After the schism that splintered a unifying divine legitimacy for secular and religious powers, citizenship and legal subjectivity were uncoupled from religious affiliation and in need of a new foundation. The transformation of natural divine law into natural (rational) law, aided by the work of Second Scholastics, contributed to the filling of this lacuna. In this period Grotius wrote *De Jure Belli ac Pacis* arguing for a natural law—intended as a tool to restrain and regulate wars in Europe—that applied to all people regardless of their religious beliefs. Nevertheless, any attempt to extract religion from the dimensions it has previously dominated can only be partial. The secular state dimension was in this period de-theologized theoretically, but religiously oriented traces remained foundational since for Grotius, "...the law of nature of which we have spoken, comprising alike that which relates to the social life of man and that which is so called in a larger sense, proceeding as it does from the essential traits implanted in man, can nevertheless rightly be attributed to God, because of His having willed that such traits exist in us."<sup>156</sup> In other words, even if Grotius can be credited with freeing natural-law theory from its traditional medieval tie, he retained theological presuppositions in his thought and stressed the dependence of man on the divine order.<sup>157</sup> We can trace not only in Grotius but in many of the major thinkers of the period how the theological-moral experience of the Middle Ages suffused the secularly intended human-centered 'rational age' that followed. As the concept of human rights began to take shape, state law became its defender. It is no coincidence that human rights have often been called 'the modern religion'. In the modern era they have taken on the task of creating an inclusive universalization intended to cross cultures and protect freedoms, including religious freedom in some sense picking up where divine natural law left off as a kind of 'moral guardian'. The rational justification of natural rights was accompanied by

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<sup>156</sup> Cited in J CHOTAŠ, *Grotius on the Foundation of Natural Law* in, H. BLOM (ed) *Sacred Politics, Natural Law and the Law of Nations in the 16th-17th Centuries*, Leiden, Brill, Boston, 2022. pp. 223–241.

<sup>157</sup> C. EDWARDS, *The Law of Nature in the Thought of Hugo Grotius*, in *The Journal of Politics*, Nov. 1970, Vol. 32, No. 4, pp. 785.

the elaboration of the founding myth of the social contract: a bottom-up plural legitimization of secular authority, divested of any overtly divine legitimacy. This then became the ground for the development of democratic systems of state power.

Just as the undeniable presence of religious roots in Grotius' thought has been glossed over by those historians who would like to claim him as the founder of a secular international law<sup>158</sup>, the theological-moral coordinates of the Middle Ages have persisted in the natural law rationalism of modernity. The result is a culturally incomplete secular framing. This has been possible in Europe because of its relatively homogeneous social contexts. The universalism invoked, for example, by human rights declarations has resonated with European outlooks anthropologically rooted in Christianity. This is in stark contrast to the imposition of Western secular modes of governance in foreign contexts as propagated for example by colonialism. Colonial projects depend on a mystified universalism used to mask brute exercises of power to dominate spaces and people by force. In the last century, colonial resistance alongside exponential globalization moving (sometime expelling<sup>159</sup>) people and capital has produced a kind of reflexive effect. Demands for equality for all religious faiths have frequently transformed into calls for what is ostensibly a re-writing of the semantics of the space of co-existence. From the local level of urban planning to the national and international levels of the legal categories of law, the asymmetry hidden in the rhetoric of secularization that promises a universality it cannot deliver is being more often brought to task. The non-neutrality of thought systems grounded in Christian moral theology is difficult to keep denying.

This is ever more manifest in the increasing demands for spaces for worship by 'minority' religious denominations in Western social contexts, which cannot be meaningfully understood through a logic of exceptionalism. The ideological foundations of democratic contexts require a more expansive view if they are to be considered legitimate. When minority faiths ask to participate in the use of urban space, these requests should be understood as part and parcel of a process of cultural and spatial translation of spaces of coexistence that transforms the grammar of subjectivity, the very fabric of daily life of all those who inhabit and share space. It may be that this desire is actually understood, at least subliminally by

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<sup>158</sup> *Ibid.*, p.784 at note 1.

<sup>159</sup> S. SASSEN, *Expulsions: Brutality and Complexity in the Global Economy*, The Belknap Press of Harvard University Press, Cambridge, 2014.

autochthons, and for this reason encounters strong resistance. In any case, once the desire for genuine inclusion is perceived, a dialectical conversion takes shape. The secular state, unable to recognize its Christian theological-moral roots, reacts with rigidity, denying space to Others and invoking nostalgic claims for a cultural identity that is unchangeable because it is ancestrally bound to the territory. This newly limited position denies the universalization potential intrinsic to the principles of the Christian faith, replacing it with principles of historical-institutional identity. Thus particularized and reified, their meaning shrinks to fit within the most recent spatial-temporal coordinates of geopolitical history. It is precisely this move that allows right wing politicians representing secular states to claim to be defenders of Christian culture. Ironically, and this is where the dialectical opposition reveals itself, majority denomination religious leaders (in the Italian case, Catholic bishops and priests) open their churches to meet the religious needs of other faiths. The original universalizing impulse that draws from the fount of divinely inspired charity towards the Other and the impossibility of exclusion comes to the fore. Ideas of asylum, immunity and exception return in the form of acceptance and welcoming of Others through the building of cultural bridges, the generation of new meanings, new universality. In this way 'legitimacy to space' is rewritten through the reception of people of different faiths into the church, into the locus of faith, based on the recognition that there are fundamental, universal ties that bind. These ties involve the shared human penchant for finding/giving meaning to space, a space that then receives and nurtures the very act of meaning making. The 'receptive church' engages in translation as a semiotic activity that renews urban space. Through an interpenetrating process of moving and merging between and among Others and autochthons, each is empowered to make and share their own space. This renewed version of religious freedom induces the re-writing of public space and the invention of a universal grammar of subjectivity that can allow space to be meaningfully inhabited by one and all.

## *2. Multi-faith misconstructions? Translating secular surfaces, religious bodies*

Following a brief foray into the past, I turn now to the present. It is my hope that by this point a picture of the religious and secular relationships affecting places of worship in Europe, and specifically in Italy, has begun to emerge. Though the analysis thus far has been focused on the conflicts

that emerge and their related historical roots, there have certainly been efforts made by both secular and religious authorities in pursuit of solutions to the management of faith diversity. Among the most secularism-friendly approaches has been that of multi-faith spaces.<sup>160</sup>

In an attempt to recognize the needs of a wide array of religions, particularly in urban contexts, the idea has surfaced of creating spaces intended for religious, spiritual or merely secular-contemplative practice. These spaces are often part of broad-audience public spaces such as hospitals, airports, or universities. Despite their vaguely utopian aspirations, Multi-faith spaces (abbreviated as MFS in architectural literature) are not without their challenges. They typically consist in largely empty rooms devoid of any decorative or symbolic elements and intended for silent private prayer. Though the original intent is to be expansive, the quest for a neutrality sufficient to accommodate all can be distinctly disappointing: “In order not to be meaningful in an inappropriate way they use banal materials, avoid order and regularity, and are the architectural equivalent of ambient noise,” writes one architectural scholar. The author continues, “These universal interfaces with God are not, as one might have thought, a sublime expression of a deep unity of which individual religions are merely a particular expression.”<sup>161</sup> Herein lies the precise problem. The notion that religions are all different flavors of the same material originates from the particular history of Christianity and its long relationship to secularism in the West. In a Christian dominated landscape where the greatest conflict was a rift between Catholicism and Protestantism that led to a splintering resulting in numerous Christian denominations, this view makes a certain sense. As has already been noted, the proto-modern strategy *cuius regio, eius et religio* created a relatively uniform break between religions and states in Europe. The social fabric was one in which there were many denominations, largely Christian, and many states, declared secular. It is not difficult to see how this resonates in a modern mentality where a variable but containable religiosity is opposed to an allegedly non-religious ‘normality.’ Important to this worldview is the idea that rationality rules, and belief is therefore always a question of rational choice. Canadian philosopher and theologian Charles Taylor is the most frequently cited in this regard for his contention that the modern condition is one in which belief

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<sup>160</sup> “Even though there is no organisation to promote them or any explicit legal requirement to provide them, there are now at least 1,500 multifaith spaces in Britain and even more in the USA and Europe.” A. CROMPTON, *The architecture of multifaith spaces: God leaves the building*, in *The Journal of Architecture*, 18:4, 2013, p. 475.

<sup>161</sup> *Ibid.*, p. 474.

in God is one choice among many<sup>162</sup>. Furthermore, the arrangement of public and private that draws the contours of European secularisms assigns religious belief to the ‘internal forum’ and religious practice to the material domain of the church. The body and the church ‘contain’ religion. From this perspective, the idea of a multi-faith space that is neutral and open to “all religions” seems reasonable.

In the US, UK and some parts of Europe, there even seems to be a level of understanding across the Abrahamic faiths that allows for openness to MFS. Spaces designed to accommodate Jewish, Christian and Muslim needs typically keep the space mostly empty but provide altars or wudu washing facilities, hidden but available. A few isolated attempts have even been made to mechanize the features particular to faiths, such as in the MIT Chapel designed by renowned architect Eero Saarinen as a shared space for Jewish and Christian faiths. It features a Torah cabinet hidden behind a trap door and raised hydraulically at the press of a switch. In a Marine Corps base in Virginia, USA, a rotating altar could be used by Catholic, Protestant or Jewish worshippers.<sup>163</sup> These mechanic maneuvers however would seem to fall far short of the liturgical needs and desires of faiths for meaningful practice. To return to the example of the cathedral described in Chapter One, every element of such a building is designed to connect the earthly and divine realms and allow for the creation of liturgical experiences: the size and shape of the overall structure, the building’s orientation, the materials used to construct and surface, the features within the space such as the altar, and the art that covers its interiors.<sup>164</sup> From an architectural point of view, a baroque church is an integrated work of art in which music, painting and architecture project a unified viewpoint. From an anthropological-religious point of view, religious praxis, or liturgy, is a semiotic act of meaning-making entwined with the material aspects of sacred spaces.<sup>165</sup> In every case, meaning, architecture, and space are perpetually entangled. Attempts at re-purpose-able ‘neutral space’ would seem to misconstrue the very purposes aimed at in the first place. The only purpose

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<sup>162</sup> C. TAYLOR, *A Secular Age*, Harvard University Press, Cambridge, 2007.

<sup>163</sup> *Ibid.*, p. 483.

<sup>164</sup> Eliade describes how Byzantine church architecture parallels a specific cosmological structure, with the four parts of the interior symbolizing the four cardinal directions, the altar representing paradise, the middle representing the earth, etc. In short, “As a copy of the cosmos the Byzantine church incarnates and at the same time sanctifies the world,” M. ELIADE, 1963 cit., pp. 61-62.

<sup>165</sup> For a rich analysis of the semiotic role of the Orthodox iconostasis as a bridge between sacred and mundane domains, see F. GIRNEATA, 2024, cit.

that would appear to be met by such spaces is that of giving a kind of lip-service to ‘multicultural/multireligious needs’ to assuage a secular view of ‘fair play’.

Neutered MFS contribute to the phenomenon of fragmenting and hiding the religious from view, but like shards of glass on pavement it sparkles in the light and cuts when stepped on. When secularist responses to religion purport to accommodate religious needs while ignoring the meaning-making substance of these needs, inescapably diverse subjectivities are merely temporarily silenced. When “God leaves the building” meaning leaves it too. Already the religious meanings brought to life within sacred spaces are only a part of a much broader worldview that infuses and structures how people live their lives. If even these architecturally encapsulated meanings are erased or watered down, what remaining purpose could there be to these spaces? Attempts to share spaces among religions are not necessarily misguided as they are likely a necessary part of any realizable urban planning solutions. Particularly in urban settings, space is undeniably limited, and even with a perfectly aligned politics of space, there may simply not be room to accommodate religious exigencies in fair relationship to other exigencies.

Secular attempts to provide shared space for religions are undoubtedly matched if not outnumbered by inter-faith projects organized by religions themselves. Perhaps the most common are mono-faith churches hosting interfaith dialogue<sup>166</sup> and encounters within their churches and in the broader community such as the historic Church for the Fellowship of All Peoples, founded in San Francisco, California in 1944 by a former Baptist minister. Also not uncommon are churches permanently sharing space with other denominations by alternating schedules, such as The Cedars Worship and Community Centre in Ontario, Canada, where Westminster

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<sup>166</sup> It has been argued that inter-faith dialogue is the single most palatable ‘form of religion’ in modern secular contexts, “...it may be posited that alongside freedom of religion and freedom from religion, secular spaces now often have an implicit third principle which is freedom to be open to religion, i.e., performing interfaith dialogue. Whether this third principle of ‘openness to’ is widely accepted as a third principle alongside ‘freedom of’ and ‘freedom from’ remains to be seen.” While this seems relatively uncontroversial, it also somehow lacks substance. Freedom to be open to any kind of social practice would seem to be a basic part of all democratic principles, and inter-faith dialogue cannot be equated to religious practice. One hopes that if the secular sphere has become a “habitat for interfaith dialogue” this does not represent a ‘win’ for religions but rather a natural part of democratic dialogue generally. See P. HEDGES, *The Secular Realm as Interfaith Space: Discourse and Practice in Contemporary Multicultural Nation-States in Religions*, 2019, 10, p. 498; doi:10.3390/rel10090498

United Church and Temple Shalom share space. More recently, multi-faith complexes are being built to include individualized buildings or spaces designed by the faiths themselves. In the US there is the Tri-Faith Commons (Omaha, Nebraska) which brings together a synagogue, church, mosque and interfaith center. In Europe, the House of Religions (Bern, Switzerland) boasts eight different religious communities with dedicated space: Alevi, Baha'i, Buddhist, Christian, Hindu, Jewish, Muslim and Sikh. The latest complex to be inaugurated (February 2023) is the Abrahamic Family House in Abu Dhabi which includes the St. Francis of Assisi Church, the Imam Al-Tayeb Mosque and the Moses Ben Maimon Synagogue in separate but neighboring structures. The mission statements of these collaborative projects use similar phrases and language, "inter-religious dialogue", "building bridges" and "advancing collaboration." While these are unquestionably noble and necessary goals, they also point to what might be called the post-secular condition. As minority actors striving to defend their turf and maintain their relevance, religious institutions are motivated to band together. Their unity also fits nicely with the post-secular dialectical attitude that tends to marginalize religions from 'rational' modern society. But as has been noted, the more secular societies segregate religion, motivated at least in part by an idea of their particularism and irrationality, the more religious institutions collaborate and find rational solutions to realize projects that resonate with the underlying principles of democratic secular societies. The more the disenchantment of the world drives religious communities into minority corners, the more they find ways to support minorities. The religious come together to address social problems and the secular create more of them by insisting that the religious are themselves the most important social problem. A brief case study may help illustrate this point.

The small town of Fisksätra, Sweden, on the outskirts of Stockholm is an outlier in its unusual religiosity. In a still largely ethnically homogenous country where only 20% of Swedes "believe God plays an important role in their life", in Fisksätra the numbers are reversed: 20% declare themselves to be as 'other' or nonreligious, while 40% are Christian, and 20% Sunni Muslim. As typically occurs, this is the result of increasing numbers of immigrants and refugees, and the town is socio-economically depressed relative to the rest of the country. Nevertheless, and against the odds, the more undocumented refugees and immigrants sought shelter in the town (the population of roughly 8,000 people come from more than 80 differ-

ent nations)<sup>167</sup>, the more Christians and Muslims united to help them. In 2008, a Muslim, a Catholic and a member of the Evangelical Church of Sweden came together to create an interreligious hub called ‘The Source.’ The immense success of the offering led to the construction of an interfaith house in 2009, which began with a parish hall. An existing neighboring building was then converted into a Christian church. The final planned stage is to build an adjoining mosque, to be built of the same materials as the church and connected to it via a common space glass atrium entitled ‘The Peace Square’. The project, however, quickly drew intense criticism and attacks from right-wing nationalist movements who refute the legitimacy of any Muslim presence in the Swedish territory. Perhaps the greatest indicator of the persisting resistance is that 15 years after the project began, the mosque has yet to be built.

A similar outcome took place in Turin, Italy, home to the largest concentration of multi-faith spaces in Italy. In planning since 2016, progress on the joint Christian-Muslim venture ‘Casa delle religioni’ has been stalled. As one study put it, the political unwillingness to give more space to minority groups has led to not a few disagreements and, at the same time, has not been adequate to meet the needs of such groups. It risks, therefore, being a hybrid place of worship disliked by its secular neighbors and unable to meet the real needs of religious groups.<sup>168</sup> Not only new buildings but also the re-appropriation of houses of worship has generated similar negative reactions as noted in Chapter 1.<sup>169</sup> In short, collaborative efforts on the part of religions to address the need for places of worship—whether related to new constructions or re-use of existing structures—are often obstructed by secular states, with perhaps particular intensity in Europe.

Secular states, however, typically feature constitutions which not only include provisions for freedom of religion, but also try to protect individual freedoms generally, such as Art. 2 of the Italian Constitution which

<sup>167</sup> <<https://www.kaiciid.org/stories/features/sweden-god's-house-offers-solution-integration-challenges>>.

<sup>168</sup> L. BOSSI and M.C. GIORDA, *La Casa delle religioni di Torino: un esempio di progetto 'multi-level', tra religioso e secolare*, in *Annali di studi religiosi*, 20, 2019, pp. 167.

<sup>169</sup> As referred to in Chapter 1, section 3, despite France’s long history of church re-use, a 2015 proposal by the rector of the Paris Grand Mosque, Dalil Boubakeur, to convert redundant churches into mosques in France met with hostility and even Islamophobia from conservative politicians. In that case, some clergy were also vehemently against the idea. Cardinal Andre Vingt-Trois, Archbishop of Paris, quipped: “Muslims have no intention of praying in Christian churches—don’t kid yourself.” Cited in K. JORDAN, *Between the Sacred and the Secular: Faith, Space, and Place in the Twenty-First Century*, in *Architecture and Culture*, DOI: 10.1080/20507828.2023.2211823, June 22, 2023, p. 8.



protects “the inviolable rights of man, both as an individual and within the social groups in which one’s personality is expressed.”<sup>170</sup> Though these kinds of foundational declarations, both national and international (as in the UDHR), continually promote rights to equality and social dignity as well as their dedication to protecting citizens against discrimination, the reality on the ground is that religious claims for space rub against the secular fabric. The interfaith projects discussed above are just a few examples of a phenomenon that is widespread. The economic and social obstacles to freedom and equality that states are meant to remove are instead firmly in place.

The greatest challenge to efforts to productively host religious diversity would seem to be twofold. First, and as has been argued throughout this book, also in multi-faith ‘constructions’ there is often a fundamental disconnect about what space is and does, and religious practice puts this in plain view. What to make of spontaneous shrines that appear in urban contexts to express adoration or mourning for events that have taken place there? How can we categorize pilgrimages, both temporally specific and yet somehow also eternal, into a spatial understanding of religious practice<sup>171</sup>? The Orthodox Jewish *Eruv* that symbolically extends the private domain of Jewish households into public areas, permitting activities within it that are normally forbidden in public on the Sabbath is producing space, in ‘Lefebvrian’ terms rather than merely occupying it. Religious practice is persistently metaphorical and all-encompassing for practitioners in the sense that it embodies and seeks to instruct the faithful not only on what or how to believe but how to live. All aspects of life are implicated, not merely the moment of prayer or worship. This complicates multi-faith uses of space, particularly those that would seek a ‘neutral’ space for prayer. The limitations imposed by such a reductive and restrained approach to religious practice attempt to enclose something that is not enclosable. It is a metonymical mistake, as if by sealing a butterfly wing in Lucite one could think that a butterfly has been captured.

Even the Christian religions who were part of the historical processes that separated internal/external, public/private, in Europe, enabling the idea that religion can be neatly contained in an architectural structure (e.g., a church), nevertheless defy this containment in their practices. The church itself, though perhaps the most ‘material’ manifestation of religion

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<sup>170</sup> The Italian Constitution text is available in English here <[https://www.quirinale.it/allegati\\_statici/costituzione/costituzione\\_inglese.pdf](https://www.quirinale.it/allegati_statici/costituzione/costituzione_inglese.pdf)>.

<sup>171</sup> For an analysis of the space-carving paths of pilgrims in the Middle Ages but also today, see M. RICCA, *Intercultural Spaces*, cit., esp. pp. 400-402.

in the public space is not reducible to its morphological aspects. Instead, its meaning seeps out into the space that surrounds it through the movements of people, sounds, smells, and more. Its internal space is also not static but rather is shaped by the rituals and other activities that take place within. French scholar Béatrice Caseau has written persuasively about the historically traceable importance of all the senses (sight and sound but also touch, taste and smell) to the experiences that take place in Christian churches.<sup>172</sup> Treating space and religious practice as separate reified entities is, to say the least, impractical.

Secondly, what is sorely lacking in even the best-intentioned efforts is a process of intercultural translation. If liturgy understood from its etymological Greek roots (λειτουργία and ἔργον) is interpreted as “acting in public space” then the bridge that connects liturgy and secular space is translation in an active sense, that is, “a semiotic activity able to parallel the transformative process entailed by people in translation, to be etymologically intended as the movement through semantic and experiential spaces.”<sup>173</sup> Actions inspired/created by liturgy are not confined to the place of worship but rather transpire with the specific intent of propagating outside it.<sup>174</sup> In the end, secular attempts to blend and make bland spaces for religion—especially when executed from above—will likely fail. In their attempts at neutrality, they blot out meaning and empty the space-making of its targets. Inter-faith dialogue may be welcome in the secular sphere,

<sup>172</sup> Consider this description of the importance of the senses to the Eucharist: “For the Late Antique period, it is difficult to establish one sense as being more important than the others. For example, many Christians related to the Eucharist offering by giving of bread and wine and by seeing, with eyes of faith, the transformation of the elements on the altar into the Body and Blood of Christ. The meditative gazes of worshippers enhanced their veneration and prayer. Yet, sight was not considered sufficient by the preachers, who invited the faithful to touch and to taste the Body of Christ. Cyril of Jerusalem, a fourth century bishop, recommended that Christians take the time to appreciate the contact of their hands with the consecrated parcel holding Christ. This sanctification by contact was extremely important and considered an opportunity to sanctify the senses. Taste, touch, sight and smell all played integral parts in the communion experience, along with the hearing of the invitation “*Ta Hagia tois hagiois*” (the holy things for the holy people). It was a complete experience from a sensory point of view. The consecration of bread and wine transformed into the Body and Blood of Christ was the climax of the liturgical experience. It allowed the faithful to experience an intimate communion with Christ,” B. CASEAU, *Sacred Space and Sensory Experience in Late Antique Churches*, in R.A. ETLIN et al, (eds), *The Cambridge Guide to the Architecture of Christianity*, Vol. 1, Cambridge, MA: Cambridge University Press, 2022, p. 23-32. On the total sensory experience of the church see also Chapter 1.

<sup>173</sup> M. RICCA, *Intercultural Spaces 2023*, cit., p. 22.

<sup>174</sup> F. GIRNEATA, cit.

but it cannot replace the spatial projections of religious praxis. Religions in the world extend beyond religious denominations and should be understood in this way when analyzing their relationship with the public sphere. Inter-faith dialogue depends on the denominational structure, insofar as it refers specifically to their interaction. While denominations are most certainly part of religious experience in many cases, they cannot subsume it.<sup>175</sup> Religious meaning exceeds the category ‘denomination’ as it is part of peoples’ comprehensive worldviews from which they make space and meaning generally, not only within the confines of the sacred building or the parish community. Liturgy is the semiotic religious tool par excellence that connects the earthly domain with the transcendent, meaning and action, and as such it can generate new ‘formations’. The metaphorical tools of religions, anthropologically understood, make them uniquely positioned to engage precisely the kind of creativity needed to shift and shape spaces to harmonize them with meaning and vice versa. Contrary to static views of the religious and the secular, as living conditions change, people adapt their viewpoints and practices. As their practices change, the societal fabric (living conditions) changes in turn. Religious praxis lends itself to fluidity in meaning making. Ancient rituals can be modified or recast when needed without sacrificing the principles or beliefs that are foundational for them. A compelling case in point has been described in Singapore.

Let me first state that I am in no way attempting to equivocate religions or minimize the important differences between the European and Asian contexts, themselves richly diverse. The intricate challenges faced by Catholic and Muslim communities attempting to share European urban space have been addressed at length in this text, and they remain daunting. There are however advantages, I feel, to turning now to a completely different context. To begin, the effect of dissimilarity is improved clarity on one’s “own” situation. By expanding our view to include alternative conceptions of the religious, all the elements being considered can more easily remain plastic. Pre-conceptions are unlikely to intrude when the objects of analysis are relatively novel. I underscore that my intent is to engage an anthropologically oriented view as a way of catching sight of the semiotic capacities that religions can put into motion. Furthermore, the case study I would like to share concerns religious practices in Singapore. This choice also has specific benefits to an analysis of religion and space. The extreme

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<sup>175</sup> R. MAZZOLA, *Diritti inutili? La variabile “religiosa” nelle dinamiche del diritto comparato* in A. SOMMA, V. ZENO-ZENCOVICH (eds), *Comparazione e Diritto Positivo. Un dialogo tra saperi giuridici*, Roma TrE-Press, Roma, 2021.

religious heterogeneity of Singapore is unusual,<sup>176</sup> and if diversity trends in Europe and North America continue as they have in recent years, a view to more advanced diversity could be instructional. At the same time, Singapore is a decisively secular state whose policies of separation between church and state have ramifications for the management of religions. Finally, the study focuses on the spiritual practices of people who identify as 'shenists'. 'Shenism', used therein alternatively with the syncretic 'Chinese religion'.<sup>177</sup> Shenism is a minority religion in Singapore with a percentage of adherents that mirrors that of Muslims in Europe. The geomantic system of feng shui is part of Shenism and offers unique insights to spiritual approaches to space making.

It has been repeatedly argued in this text that a flat or overly materialistic view of religion cannot hope to arrive at an understanding of its meanings or ways of meaning making. Religious 'praxis' is sometimes invisible, so fused is it with praxis generally. In their evident materiality, spaces of worship can somehow inspire categorization schemes that operate as if a photographic representation of reality were possible. Where or what is religion? Look at it there, in the church. And yet as we have seen, it is precisely the subversion of the dialectical division of spiritual/material, here/there, then/now that characterizes religious views and practices. This extends to the very perception of time. Mircea Eliade has long been appreciated as being among the most insightful in this regard in his distinction between temporal duration and sacred time, about which he writes:

<sup>176</sup> The religious breakdown as of September 2023 is as follows: Buddhists (26%), Muslims (18%), Christians (17%), Hindus (8%), Shenists (6%), unaffiliated (22%). (35%) of Singaporean adults have changed their religion during their lifetime. Pew Research Center, available at <<https://www.pewresearch.org/religion/2023/09/12/religious-landscape-and-change/>>.

<sup>177</sup> The authors state that they use the term 'Chinese religion' "collectively to describe the myriad beliefs adhered to by the majority of the Chinese population, which is highly eclectic, reflected in the varied nomenclature adopted to describe it (see KONG 1991: 129). WEE (1976) has attempted to clarify the status of these various strands of Chinese religions by using Buddhism as an organizing base line. She distinguishes between Buddhist systems that refer directly to specific Buddhist canonical traditions (Theravada and Mahayana schools), on the one hand, and those which have no direct Buddhist canonical reference, on the other. Of the latter, there are two groups: 'shenism' (no canonical tradition of any kind) and 'sectarianism' (with each sect having its own canonical tradition). In this paper, we focus on the more common syncretic 'Chinese religion' which incorporates elements of Confucianism, Taoism and Buddhism as well as ancestor worship, and other elements of animistic folk religions." T.C. KIONG, L. KONG, 2000, *Religion and modernity: Ritual transformations and the reconstruction of space and time*, in *Social & Cultural Geography*, 1:1, 29-44, DOI: 10.1080/1464936950133476, p. 31.

One essential difference between these two qualities of time strikes us immediately: by its very nature sacred time is reversible in the sense that, properly speaking, it is a primordial mythical time made present. Every religious festival, any liturgical time, represents the reactualization of a sacred event that took place in a mythical past, ‘in the beginning.’ Religious participation in a festival implies emerging from ordinary temporal duration and reintegration of the mythical time reactualized by the festival itself. Hence sacred time is indefinitely recoverable, indefinitely repeatable. From one point of view it could be said that it does not ‘pass,’ that it does not constitute an irreversible duration. It is an ontological, Parmenidean time; it always remains equal to itself, it neither changes nor is exhausted.”<sup>178</sup>

If we understand all human categorization schemes, including time and space, as means of managing reality through the unfolding of future experience, then we can see that religious ways and means can be profoundly instructional. They are flexible in ways that make space for new creative developments. They are fully aware of the relationship between ends and values. They are comfortable with the management of the means/ends-values dialectic and the need to ‘move’ the elements that make up every category when environmental conditions change. This is how Singaporeans, with an inordinate fear of the dead, can agree to live on top of former cemeteries, the provocative example that begins the study I will share here.

This fascinating ethnographic study<sup>179</sup>, undertaken by a sociologist and a human geographer, analyses how changes wrought by modernity have impacted every aspect of the management of the dead, from the choice of cremation over burial, the types of burial sites available and the rituals held at the time of death and beyond. Though it is impossible to adequately summarize the practices of Singaporean shenists in such a small space, a few key background concepts can assist in our understanding. An over-arching principle in many traditionally Chinese belief systems is that of balance and harmony in the cosmos. In a worldview in which heaven, earth and humans are all part of an all-encompassing whole, it is fundamental that order be actively maintained, and it is the job of humans to do so. This principle extends to all aspects of life: temperature balance in foods consumed (e.g., hot foods should be balanced by cool foods), equilibrium with nature in both landscaping and indoor design (feng shui), and temporal choices, so that “there is not only a right ‘place’ for things but also a right time to do things— whether it is embarking on a trip, opening

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<sup>178</sup> M. ELIADE, *The Sacred and the Profane*, cit.

<sup>179</sup> T.C. KIONG, L. KONG, cit.

a shop or getting married.”<sup>180</sup> Notions of ‘purity’ and ‘pollution’ guide the management of sacrality. Not unlike the Catholic practices of consecration and deconsecration, traditional Chinese rituals are engaged to “remove pollution” in spaces that are associated with death, making them neutral or restoring them to sacredness. Again, time is a relevant factor since the length of mourning periods is determined by a person’s degree of closeness to a deceased person: the closer the relationship, the longer the mourning, which serves to purify the pollution of death.

It is not difficult to imagine how the population increases of modernity have drastically impacted the way traditional funereal practices are conducted. Whereas funerals were once held in homes or temples, the diminished size of homes and decreased number of temples have made this mostly impracticable. Instead, funerals are often held in the empty floors of public-housing condominium buildings. It bears noting that this results in a dramatic change in the very concept of these rituals: what was once a private, family affair has now become public. This change introduces others: since death carries pollution now introduced to the public, practices have been developed to protect people such as the placement of small red pieces of paper tracing a path between the home and the funeral site, or the covering of the coffin on all sides. The tradition of burning of joss papers and paper money as offerings to the gods and ancestors is a practice that for many Singaporean Chinese was typically performed in the private home. But modern legal regulations forbid this, so offerings must be burned in the spaces just outside of apartments. This introduces an important challenge, however. The dispersal that occurs in a public space means that all burnings become mixed. The same occurs if people use the government prescribed public bins. As one woman stated, “How will the ancestors know that the offerings are for them? Everybody is burning outside.”<sup>181</sup> Creative responses to these challenges include drawing a chalk circle or pouring a ring of tea around offerings to separate them. Others use personal bins placed outside their apartments, despite the illegality of this practice. Another innovation, spurred by the shift from burial to cremation and the resulting move from graveyards to columbarium for the—

<sup>180</sup> “The Chinese perspective is that there exists an integral relationship between the world of humans (microcosm) and the ‘other’ world (macrocosm). Events in one world impact on events in the other. All parts of the entire cosmos belong to one organic whole and they all interact as participants in one spontaneously self-generating process. [...] The Chinese see themselves as co-operating with a heaven above and an earth below; humans are a third component in this all-encompassing order.” KONG, KONG, *cit.*, pp.31-32.

<sup>181</sup> *Ibid.*, p. 38.

now public—storing of ashes is to call out to ancestors to come receive their offerings. This adds a verbal component to what was once a visual practice. The state has considerably altered the material conditions of funereal practices. In response, people have remodeled their practices reconceptualizing sacred space. What was once private, homebound and silent has become public and vocalized. The temporal aspect of funerals has also changed to respond to modern secular needs. Whereas traditional funerals could last for years and coffins kept for months while an appropriate place and time for burial were identified, modern constraints do not allow for these practices. Today in Singapore funerals typically last three to seven days; these numbers are not random, however. Funerals are held for an odd number of days because in the Chinese worldview odd numbers related to continuity, “By holding funerals for an odd number of days, it is believed that the deceased is not gone, but continues to perform important roles in the lives of the living. It also indicates continuity for the deceased in the cycle of rebirth.”<sup>182</sup> The study identifies other invented rituals and practice that demonstrate the ingenuity of people in upholding their beliefs while accommodating the constraints of modern urban living. Ideas regarding pollution and purity, respect and continuity of relationships between the living and the dead, are all nurtured even while their material manifestations—imposed by external factors—change conspicuously.

There are undoubtedly numerous examples to be found in Western contexts of the adaptiveness and creativity of religious rites and practices in the face of modern urban constraints. From modified altars to improvised iconostases, from space sharing to alternative prayer places, from the digitalization to the metaphorization of rituals and rites, religions today engage their semiotic capacities to attune to modern needs through what are essentially acts of translation. This is to be distinguished from accommodation or toleration. Once again, translation is here understood as a semiotic act that puts dialectical oppositions (internal/external, material/spiritual, facts/values, individual/communitarian) in communication and produces new forms for the creation of meaning. These forms have both material and experiential effects and generate new spaces, new ways of being.

This section began with a consideration of multi-faith spaces, and the creativity they call for will continue to be important in managing plural urban needs. So far it seems that those projects initiated and run collaboratively by diverse religious communities have more satisfying results than their secular counterparts. The obstacles that secular regulations engage,

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<sup>182</sup> *Ibid.*, p. 40.

however, makes it difficult to make progress. Religiously illiterate secular intrusions devoid of any and all cultural translation are unlikely to have a positive effect on resolving conflicts in urban spaces. Philosopher and critic George Steiner observed in 1975 that, “Unification, the search for the monistic ‘ultimate’ are very much in the air. This is true of ‘Big Bang’ cosmology, of the micro-biology of DNA, of evolutionary genetics, of particle physics.” I argue alongside Crompton<sup>183</sup> that ‘multi-faith solutions’ often fall into this trajectory insofar as their focus on Abrahamic faiths amalgamated by terms like ‘people of the book’ or ‘people of one God’. Steiner continues, “This quest may reflect deep-lying anguish in the face of seemingly intractable ethnic and cultural conflicts. A ‘centre that can hold’ is an intense desideratum.” What I hope is emerging in this work is that when it comes to religion and ‘the rest’, particularly in modern urban spaces, a center that can hold will have to be polycentric, and any ‘holding’ will have to be temporary. New inventions will need to make way for other new inventions, and responsiveness will need to be the guiding principle for all. How this responsiveness might be elaborated is the topic to which I will now turn.

### 3. *Simultaneum mixtum reimagined. A spatial constitutionalist view.*

In the spirit of “nothing new under the sun”, once again a historical field trip can help to illuminate our theoretical path. The term *simultaneum mixtum*, as may be obvious, is a term coined to refer to simultaneous mixing, specifically the sharing of sacred space by different denominations in 16th-century Germany. Historians credit the Reformation with compelling such collaboration since the Peace of Augsburg drew territorial lines around religious denominations, which however could not always perfectly separate them. When a previously multi-confessional region was declared mono-confessional, religious denominations were forced to share churches and so the *simultaneum* was established. Though there are entertaining accounts of the squabbles and altercations that sometimes resulted from these close quarters<sup>184</sup>, the more salient and overlooked history is one

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<sup>183</sup> A. CROMPTON 2013, cit, where he cites Steiner, p. 494.

<sup>184</sup> “Defilement could also be deliberate and provocative. In 1638, the Catholics complained that the Lutherans had put snot into their baptismal font in the shared church of Biberach in Swabia on purpose.” M. CHRIST, *Sensing Multiconfessionality in Early Modern Germany*, in *German History*, Vol 40, Issue 3, September 2022, <<https://doi.org/10.1093/>



of impressive and abiding peaceful co-habitations that lasted at least two hundred years.<sup>185</sup> Furthermore, shared churches were not limited to a few instances but in fact have been estimated to number more than a thousand within the Holy Roman Empire after the Thirty Years War.<sup>186</sup> The practices of these spaces of course varied. Indicatively, the terms *simultaneum subsequens* or *simultaneum successivum* were used to describe the sharing of space at differing times of the day or the week. But there was an even more remarkable phenomenon that took place in the middle decades of the seventeenth century in Goldenstedt, a village in lower Saxony: shared liturgy.

Though it took another two centuries for detailed historical descriptions to emerge, it seems clear that rites that took place for centuries in Goldenstedt blended Catholic and Lutheran practices from the beginning to the end of each ceremony, producing a hybrid rite. Interestingly, this rite was not ‘equal’ in the way that modern expectations might assume. Instead, it reflected the “segmented hierarchies” that characterized the community.<sup>187</sup> The liturgy consisted of an entirely interwoven set of rituals

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gerhis/ghac037>, pp. 317–339.

<sup>185</sup> “In one form or another, these behaviors endured two hundred years—through the height of the Thirty Years’ War, the Enlightenment, the wars of the French Revolution, the collapse of the Holy Roman Empire, foreign occupation, and the restoration of post-Napoleonic order after 1814—until the middle of the nineteenth century.” D. M. LUEBKE, *Misremembering Hybridity. The myth of Goldenstedt*, in C. L. JOHNSON et al (eds), *Archeologies of Confession: Writing the German Reformation, 1517-2017*, Berghann, New York, Oxford, 2022, pp. 23-44.

<sup>186</sup> CHRIST 2022, cit. p. 325. There are of course many other examples around the world of shared sacred spaces, a few of which I have referenced in previous sections. My choice not to address Jerusalem could be perceived as a glaring omission, since it is surely among the most contested shared sacred spaces in the world. It is precisely because of its unique position that I have chosen not to review it here as it would take tomes to arrive at anything close to adequate treatment. Furthermore, the current conflicts in the Middle East are testimony to an abiding refusal to engage in the intercultural translation and collaboration necessary for successful space-sharing, a frequent condition of post-secular regimes. See, however, S. FERRARI and A. BENZO, *Between Cultural Diversity and Common Heritage*, cit. for insightful essays on the topic.

<sup>187</sup> “At the beginning of each service, he relates, the Catholic curate would process down the nave to the altar, accompanied by two Catholic altar boys, then pray quietly as the Lutheran sexton led the Protestant congregants in singing the “Kyrie fons bonitatis.” From then on, the service alternated between the Catholic priest’s Latin chants and the Lutherans’ vernacular singing. After the prayer, for example, the priest sang the “Gloria in excelsis Deo,” which the Lutherans followed with a round of “Allein Gott in der Höh.” After the epistle and gospel readings, similarly, the priest chanted “Credo in unum Deum,” followed by the Lutherans’ rendition of “Wir glauben all’ an einem Gott.” The Lutherans fell silent at the *elevatio*; after the priest performed the Eucharistic rite in the Roman

and yet parishioners in Goldenstedt maintained certain denominational practices that were core to their doctrinal beliefs. While baptism, marriage and burial were all performed in a mixed fashion (Catholics might be married by Lutheran ministers and Lutheran babies might be baptized by Catholic priests, for example) there was one rite that was treated distinctly: communion<sup>188</sup>. As the most sacred rite, the denominational separation of communion was maintained across 200 years of the existence of the simultaneum in Goldenstedt. Lutherans and Catholics took communion in separate churches, traveling to other towns to do so. This reveals that collaborative arrangements need not necessarily eliminate or mow over differences. Particularities of faith practice can be preserved even when multiple elements are shared across communities.

Luebke's cogent study focuses on how the modern tendency to view peaceful interreligious cohabitation as the exception to a predominantly conflict-ridden history ruled by denominational intolerance is challenged by the history of simultaneum mixtum, and specifically the community in Goldenstedt. Even more compelling is his argument that categorizing this site of religious cooperation as unique was a necessary narrative strategy that was essentially produced by the history that followed. In his reading, Goldenstedt was "a model for the enlightened promotion of both piety and religious toleration." In the nineteenth century, however, the German environment was increasingly defined by "the establishment of legal religious toleration, the collapse of confessional segregation along territorial lines, and the reorganization of religion around concepts of authenticity

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manner, *sub una specie*, for the Catholic parishioners, the Lutherans sang another hymn. Lutheran parishioners were not compelled to receive the Eucharistic host in the Catholic manner; for communion, they traveled to the nearby Lutheran parishes of Colnrade and Barnstorf, six and twelve kilometers distant, respectively. At the conclusion of the rite, the priest delivered his homily for any parishioners who had not already departed. Finally, Catholic parishioners recessed to the vernacular singing of Lutheran schoolchildren and congregants. Later accounts added a few details—that, for example, the priest sprayed the entire congregation with holy water as he processed toward the altar. But the general picture is one of overriding liturgical continuity." LUEBKE, cit., p. 26.

<sup>188</sup> The reasons for keeping communion separated are doctrinal. The Catholic belief system features transubstantiation, that is, the belief that in the ritual of communion the wine and bread consumed transform into the blood and body of Christ. Protestant doctrine instead features consubstantiation, the belief that the body and blood of Christ are present alongside the wine and bread which function as symbols in the ritual. It should be noted that some Lutheran theologians reject the term consubstantiation as being in contradiction with their refusal of the possibility of the local conjunction of two bodies. In both traditions the rite is deeply sacred because it encapsulates the entire life of Jesus Christ and his salvific role for humanity.

and belief.” (emphasis mine). In this context,

Catholics discovered in Goldenstedt a boundary-violating repudiation of the denominational self-segregation that these new realities seemed to encourage. The record of Goldenstedt’s *simultaneum* contained plenty of evidence to suggest it was largely homegrown and more or less amicable through most of its existence. But its significance was overlooked, for to recognize the possibility of peaceable convivium, let alone the sources of disturbance, would have meant denying the very attributes that gave Goldenstedt its social meaning as an object lesson in the danger and futility of mixing religion. For nineteenth-century Catholics, Goldenstedt was unique because it had to be.<sup>189</sup>

In other words, admitting that peaceful collaboration had been not only possible but broadly practiced for two centuries would directly contradict 18th and 19th century paradigms of separation and purity, important for the subsequent modelling of carefully distinguished confessions and secularism in the singular.

Why is this very particular 17th century German example relevant to a discussion of modern urban sacred spaces today? First, because as we have seen, it is not so particular after all. At the very least in Germany, several studies show that accommodating credal differences was a widespread response to religious pluralization.<sup>190</sup> Indeed, examples of all kinds of collaboration between different faiths across far-ranging epochs and territories have been offered throughout this work. Second, because it highlights the discrepancy between institutional political movements and purity claims and those actually sustained by believers and local communities. Goldenstedt offers an example of how people can be motivated to preserve communal cohesion over and above identitarian claims and theological differences to the point of adapting their very liturgy to do so.<sup>191</sup> Relatively peaceful co-habitation, even between ‘conflicting’ religions is neither necessarily dangerous nor futile, as so many modern pundits are eager to claim.

Some descriptions of *simultaneum mixtum* refer to it as a form of religious toleration, but I believe that in its most developed versions, it is more than that. It is one thing to allow the existence of difference without overt interference, the calling card of tolerance: this is represented by space-shar-

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<sup>189</sup> LUEBKE, cit, p. 25.

<sup>190</sup> *Ibid.*, p. 28.

<sup>191</sup> *Ibid.*, p. 29.

ing arrangements in which confessions take turns using the church but do not interact. It is another to invite, involve, incorporate. The experience of parishioners described in the Goldenstedt account is one of deep intermingling, with people of different confessions sitting side by side during rites for generations, since parishioners of both faiths bought the rights to seats in pews under a leasehold arrangement, allowing them to subsequently sell or bequeath them to the next generation. Furthermore, the author insists that the adaptations found in Goldenstedt “were not *sui generis*, but reproduced a widespread, regional manner of preserving parochial and communal cohesion by adapting liturgy to accommodate theological differences among the congregation.”<sup>192</sup> He argues further that the best way to understand these long-lasting interfaith practices is to recognize that more than religious interests motivated cooperation. People attended services as “a sign of civic honor and an emblem of communal belonging [...] a privilege of membership in the parish, and the commune to which it corresponded.”<sup>193</sup>

The key word here is membership. As the most social species on the planet, humans crave belonging. This word has famously been used in secularism scholarship to describe an increasingly prevalent way of relating to religious practice in modern contexts: “believing without belonging.”<sup>194</sup> Originally the reference was to English citizens in the late 1980s whose church attendance was in persistent decline, but who nevertheless self-identified as believers manifesting what was termed “implicit religion.”<sup>195</sup> This view, however, would seem to be part of a group of dialectical ideas that frequently appear within the scholarly mystifications of secularism.<sup>196</sup>

<sup>192</sup> LUEBKE, cit. p. 29

<sup>193</sup> *Ibid.*, p. 32.

<sup>194</sup> G. DAVIE, *Religion in Britain Since 1945: Believing Without Belonging*, Wiley, London, 1994.

<sup>195</sup> G. DAVIE, *Believing without Belonging: Is This the Future of Religion in Britain?* In *Social Compass*, 37(4), 1990, pp. 455-469. <<https://doi.org/10.1177/003776890037004004>>.

<sup>196</sup> Roughly: belief belongs to the internal private forum whereas rational law governs the external public forum; these domains can be easily divided in tidy formulas like ‘church and state’; religious people are to be distinguished from non-religious people, and in the modern semiotic ideology, the former are second-class citizens insofar as they are irrational and therefore not modern; from this perspective, it is even more important that religious views and behaviors be relegated to the private realm since they are disruptive to the rational, reasonable, secular public sphere; the state accepts religion insofar as it remains enclosed. This entire narrative has important consequences for sacred spaces as it aligns with ideas of keeping religion limited to the inside of religious buildings. That instead religion always exceeds these constraints, and that people cannot be partitioned into their different parts (religious/non-religious) troubles the entire narrative and subsequently the

Denominational or church belonging is here distinguished from broader community belonging or even belonging to a shared mixed Anglican-secular credo. If we open up the categorical spectrum of the term 'belonging' we can find resonances across many forms of community. Again, who is to say that a Muslim in Pisa who would appreciate the inclusion of a mosque is not also a football fan, a Pisan 'tifoso' who would appreciate a new stadium? The super-metropolises which receive so much scholarly attention today often inspire a sense of belonging among inhabitants that surpasses national, ethnic and perhaps even religious forms of belonging (e.g., New Yorkers, Hong Kongers, etc.). Though religion is a kind of quintessential category of belonging, I have tried to demonstrate that it is best viewed in its fluidity. Just as people are not legal norms, they are also not denominational credos. This work has approached from many different angles the central topic of religion in urban space and I have tried to argue that both are forms of human creating which found and form each other. The challenges of managing both call for an open and flexible perspective rather than one that reproduces outmoded rigidities.

As has been pointed out previously, every space taken up by a church is a space that is filled, already semanticized. Urban spaces hosting churches are particularly challenged because space is so limited. In the international city of Milan where at least 20% of the population is foreign born, there are 169 churches within 182 square kilometers, to give just one sketch. There is no escaping the religious semanticization that characterizes all European cities.<sup>197</sup> This means that only transformation will make room for any future uses. And yet, making room does not necessarily mean replacing one group or one set of practices with another, as the mixtum clearly shows. Another telling example from the long experience of Goldenstedt featured physical confessional liturgical adjustments: "Corpus Christi processions through the village had been replaced with Corpus Christi processions around the parish churchyard", enabling Lutherans to accompany the procession with song without signifying any adherence to Catholic doctrine though visible participation in the procession.<sup>198</sup> This can kind of

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treatment of sacred spaces as well as public belonging.

<sup>197</sup> Indeed, "The village-centre form of church architecture is not without precedent. For centuries throughout Europe the church often did lie at the centre of urban life, both physically and socially. Churches frequently opened out into a public square in which the communal life of the town or city was concentrated." M.A. RAE, *Architecture and Christian Theology*, cit., p.16. I have addressed the conditioning quality of these space infusions at more length in M.L. VAZQUEZ, *End of Secular City Limits?* cit.

<sup>198</sup> LUEBKE, cit., p. 31.

religious adaptation can be related to the case studies cited previously in Singapore where religious rites are adjusted to accommodate spatial limitations while upholding religious value systems. Given the density of the historically religious presence in European urban contexts, we might even say that every 'foreigner' living in a European city must move 'around the parish churchyard' accompanying the way life is lived there even if they do not adhere to the embedded doctrines.

To be clear, my suggestion is not simply that people can simply adapt and adjust their behaviors in order to manage social conflict, but rather that this is one ingredient in a recipe that radically reconsiders the material use of space. As one urban study put it,

...space can be used both in a conservative mode to structure and reproduce existing social relations and statuses, usually by using space to segregate, and in a generative mode to create the potential for new relations by using space to create co-presence through integration. [...] the conservative mode leaves things much as they are, while the generative mode, by creating a richer field of potential encounter, can lead to the appearance of new social connections.<sup>199</sup>

I would make one adjustment: leaving things "much as they are" is only ever a temporary condition since entropy, social and material, will transform space just as surely as intervention. In any case, all space is a medium for transaction and action. The contest for space is always simultaneously political and identitarian—constitutional: it constitutes space and subject. Space and subject are not separatable. Religion, understood anthropologically, is already both inside existing spaces and in the people in constant motion in the spaces. As has been discussed throughout this work, liturgy is the creation of a space in motion and a motion in space. It is a bridge between the sacred and the profane, between internal and external world-making. It engulfs past rituals and actions and projects into future rituals and actions. In some ways it is the ultimate form of translation as it takes in, transforms, and makes new forms of expression, of being. The dialectical opposing of religious space and secular space can only refer to mystified visions that do not reflect how religious people live religion nor how secular people live secularity. Protests against others' use of space for religion only reveal the continuum between people's constitutions and space's constitution. There is no such thing as neutral religious

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<sup>199</sup> B. HILLIER, L. VAUGHAN, *The City as One Thing*, in *Progress in planning* Volume 67, Issue 3, 2007, pp. 205-230

space; there is no such thing as any kind of neutral space. Rigidifying uses of space along denominational lines is the opposite of a meaningful convivium, as history repeatedly shows. The declared protection of the now compartmentalized and 'tolerated' religious denominations in Germany after the fall of the Holy Roman Empire led to an emphasis on difference and the dissolution of the majority of simultaneous churches.

So, what does it mean to take a 'spatial constitutionalist view'? How does the idea of *simultaneun mixtum* apply? I believe that what is called for is a reconsideration of the semantic social contract that undergirds urban space making. Following Ricca's legal reading of Greimas and his "*contrat de véridiction*"<sup>200</sup>, the semantic social contract is a communicative fabric that epitomizes and weaves together people's various habits for categorizations. To survive the inevitable social changes, it must maintain a relative degree of entropy and openness in its contents. It is contemporary with culture and, like culture, can go through phases of rupture or discontinuity. From a constitutional democratic perspective, differing practices and habits (linguistic, physical, liturgical, and otherwise) should find space for inscription, space for being interwoven into the existing social fabric. Once again, 'renewal' is the operative word, lending itself well to urban contexts. From the "Right to the City" to UNESCO's "Recommendation on Historic Urban Landscapes", many before me have pointed in this direction, recognizing that cities belong not to ancient forefathers (or their alleged descendants) but rather to their current inhabitants. That new arrivals inevitably reinterpret and reimagine what their city is and does and must be included in planning and managing efforts if equitable solutions are to be found. Spatial contestations will not be resolved until all the common space is reinvented through deliberate acts of translation, not through parceled out toleration. Any truly constitutional dynamic should be understood as a perpetual process of modulating the meanings that make up social and legal subjectivity and their tangible expression. Meanings are developed through deliberate efforts towards reciprocal understanding and translation/transaction between differences.

The need for these reinventions to move from both bottom-up and top-down cannot be overemphasized. Everyday people's voices must have aural space and governments must prove capable of listening. It has been argued that the term 'community' is somehow too demanding, implying that its members share backgrounds or ideas. The alternative 'neighborhood' is somehow not demanding enough. The term 'stakeholders' has therefore

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<sup>200</sup> M. RICCA, *Ignorantia Facti Excusat*, cit.

been proposed, “for indicating the multiple choices and the multifaceted associations based on the dynamic past and present circumstances.”<sup>201</sup> While I dislike the term for its association with corporate capitalism, if understood in a more etymological way it may be useful. If a ‘stake’ is something of value that is put into play, or a shared interest in a situation or system, then perhaps it is a way to think about all the different facets of humanity that come together in urban contexts to form a co-constituted body, of space, of law. A stake is also something mobile: you can plunge it into a plot of land, but also pull it out again and put it somewhere else.

It might even be useful to parallel this interpretation of ‘stakes’ with that of ‘rights’ understood dynamically.<sup>202</sup> As has been argued and demonstrated in this work, in modern liberal contexts, rights have an unfortunate tendency to coagulate into their legal formulations. What have previously been considered the contents of a given right come to substitute the right itself, sometimes even losing sight of its original teleological aspirations. This is more than diffuse in the domain of the right to religious freedom which can become profoundly distorted when overly distanced from its origins.<sup>203</sup> If instead we thought of rightsholders as stakeholders in the sense described above, then legal regulation could be used as a semiotic tool to resemanticize the space of experience. Rights, like stakes, should not be treated as pre-existing, but must instead be pluralistically interpreted, open to change, if they are to achieve their envisaged ends. The right to space is the right to make space, the right to believe what it can and should be, the right to change ideas, updating them to reflect the ever-changing flow of life experience. In previous sections of this work, the fluidity of liturgy, its elastic possibilities, have been cited as potential contributions to the management and creation of new spaces. The flexibility of an interculturally aware law is its counterpart.

Another conceptual ingredient is that of layering in the sense that “synchronous spaces contain the past within them.” Particularly in the case of ancient sacred sites, there are often layers upon layers of prayer sites, temples, churches, cathedrals, etc. built upon each other over the centuries. But then, all places populated over centuries feature these stratified effects. If we follow the conceptual approach to space that has been continuously outlined in this work, the continuum between time, action

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<sup>201</sup> M. TURNER, T. TOMER, *Community Participation and the Tangible and Intangible Values of Urban Heritage*, in *Heritage & Society*, 6:2, 2013, pp. 185-198.

<sup>202</sup> For a semiotic approach to the dynamics of legal categories see M. RICCA, *How to Undo*, cit.

<sup>203</sup> M. L. VAZQUEZ, *Antigone's Protest and the Covid Crisis*, cit.



and space brings about a magma of meaning that appears, disappears, and reappears as spatial entities are constituted.

One architectural study<sup>204</sup> of cathedrals in Barcelona concentrates on the squares in front of these churches noting how when a church has a square in front of it, the two merge into a single joined entity that offers significantly enhanced possibilities for church events and activities that are shared in the urban area. Cathedrals without such space are unable to exceed their material boundaries. The authors however note that just as temporary markets, parades, concerts and other common urban events temporarily overtake streets, so too could church events temporarily occupy the urban space in front of them when more space is needed through painted space demarcations temporary seating, etc. Though the study analyzes the majority religion of its urban context, I would propose the application of the suggested methodology to minority religions. Reference has already been made to the legal stipulations for Islamic cultural centers in Italy and the increasing need for places of worship for Muslim communities. What if exceptional needs were accommodated by the space surrounding Islamic cultural centers? If temporary space can be made for partisan political events in public squares as it regularly is, why not Muslim activities? If Catholic processions can move through and colonize city streets why not Eid al-Fitr? This is in no way to suggest that temporary solutions are the best answer, particularly for minority religious needs.<sup>205</sup> My intention is to underscore the constitution of space, and the need to view it as open to inscription by all. Basic equity will not be achieved when legal regulations are used to either prevent minorities from the use of space or else marginalize them into a use that is bound to further deepen the divides present in the urban fabric. The irony of a mayor in secular Italy who accuses Muslims of arrogantly and illegally praying in a city square whose contours are defined by the cathedral and the city hall which are themselves attached, should not be lost on us.<sup>206</sup>

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<sup>204</sup> A. ARBOIX-ALIÓ et al, *Relevance of Catholic Parish Churches in Public Space in Barcelona: Historical Analysis and Future Perspectives*, in *Buildings* 2023, 13,1370. <<https://doi.org/10.3390/buildings13061370>>.

<sup>205</sup> Temporary solutions can be thoroughly dissatisfying for all parties involved, not least because they leave intact the power balance in which majority groups 'generously allow' minorities use of some small space and can then be dismayed by any unexpected unwelcome by-products. See, Jones citing Ahmed, who notes, "Hospitality is also rarely, if ever, unconditional, and gratitude is often expected in return for the host's goodwill", R.D. JONES, *The makeshift and the contingent: Lefebvre and the production of precarious sacred space*, in *Environment and Planning D: Society and Space* 2019, v. 37, 1, pp. 177-194.

<sup>206</sup> The March 20024 'scandal' of Monfalcone, a town in the Friuli-Venice region of

As I have elaborated here and elsewhere<sup>207</sup>, space is a construction of, among other things, value-space-law collaborations. The multiplicity of elements therein can be identified in terms of their axiological human consequences. Spatial justice means equidistance for all people in any given territory. Spatial constitutionalism means working with a grammar of subjectivity that is open to the inscription of new lexicons, new ways of living and making space. The language of constitutions is deliberately vague and open so that changing ascriptions and interpretations can pave new roads to justice. A spatial constitutionalist approach would be open and inventive to all aspects of space-making. Requests for the use of space should not be automatically rejected or summarily pigeon-holed into pre-existing categories but should instead be seen as opportunities for new designs, patterns, arrangements. The semiotic continuity of space that makes distant places close and close places far leads to novel situations that would not otherwise be possible.

The theoretical ground for this assertion is that of chorology<sup>208</sup>. A complex term with ramified histories, it refers in scientific contexts to the causal relationships between geographical phenomena within a specified

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northern Italy, involves a confluence of legal foot-dragging, right wing politics and Muslim needs for sacred space. The town does not have a mosque but instead has Islamic cultural centers which community leaders attempted to make use of for the prayers of Eid al-Fitr at the end of Ramadan. The plan was to alternate prayer times to avoid any excessive public disruption, for which they sought approval. Legal responses however were slow in coming. In the meantime, alarms were sounded regarding the illegality of any prayer in the cultural centers, and in the absence of a legal pronouncement, local government informed the Muslim community they could pray in two allocated open spaces, one located under a railway underpass, the other in an industrial parking lot. Muslim leaders declared they would pray in the public square instead, leading to aggressive declarations from the mayor on their “arrogance”. Other political voices pointed out instead that in the past sports facilities were allocated for these prayers without incident. With sentence N. 01580/2024 the State Council declared that the local government was obliged to identify suitable and dignified places for members to exercise their right to worship within seven days. Further news on the situation, however, have not been readily available.

<<https://ilmanifesto.it/monfalcone-la-comunita-islamica-puo-pregare-ma-in-un-sottopasso-ferroviario>>

<<https://www.ilfattoquotidiano.it/2024/03/13/monfalcone-la-sindaca-cisint-non-abbandona-la-crociata-contro-le-moschee-la-comunita-islamica-risponde-con-carte-bollate-e-proteste/7476861/>>.

<sup>207</sup> M.L. VÁZQUEZ, *End of Secular City Limits?*, cit.

<sup>208</sup> M. RICCA has written about chorology for years but for the most recent elucidation from which this section moves, see *Chorology, Post-colonial Theology, and Intercultural Legal Experience*, available at <[https://www.researchgate.net/publication/377730160\\_Chorology\\_Post-colonial\\_Theology\\_and\\_Intercultural\\_Legal\\_Experience](https://www.researchgate.net/publication/377730160_Chorology_Post-colonial_Theology_and_Intercultural_Legal_Experience)>.

region. But there are Platonic origins for ‘chora’ that are aligned with an idea of a “semantic-space continuum”, more than germane to a spatial justice analysis. The connection lies in the inescapable and constant human use of categories. Space making depends on categorization schemes that determine the contours of any identified entity in space (what makes a church, for example). Likewise, the semantic spectrum of any conceptual category is often thought of as a spatial frame whose salient features shift in and out as categories are invented and re-invented. In the botanical sciences, the term ‘areals’ refers to species that are semantically unified through the strength of their shared features, despite being separated by vast geographical distances. A similar observation can be made regarding human ‘diasporas’, people who have dispersed far and wide from their homeland.<sup>209</sup> A chorological approach, then, is one that recognizes the connections every person traces between things and experiences that may be far away in space or time but that are present in their everyday acts of meaning making. The by now common experience of walking into an ‘ethnic bodega’ in a Western city and being instantly transported to another land through sights, aromas, music and newscasts, renders the phenomenon. A more sinister iteration is that of casinos which block natural light and keep the soundscape filled with an overwhelming cacophony of gaming bells and whistles to keep people bound to an artificially unchanging present. In each case, space is fluid. We can be here and there simultaneously, and the spaces we inhabit are themselves in motion, subject at all time to the impositions and modifications of the bodies in their midst.

The epithet sometimes launched at immigrants to go back to where they came from is literally impossible since those ‘wheres’ no longer are if they ever were.<sup>210</sup> What is more, space is not only something external but something that is inside of us, carried with us, held as ‘stakes’. It is inseparable from time since it is made of past experiences and future projections. Thus, “what is needed is a sense of space ‘which is extra-verted, which includes a consciousness of its links with the wider world, which integrates

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<sup>209</sup> One thinks immediately of the Jewish diaspora, so important to the faith and often claimed as a distinguishing feature that muddies the externally imposed dialectic religion/ethnicity or even belief/belonging.

<sup>210</sup> One journalist writes, “Thanks to migration, in fact, communities have been created in Emilia-Romagna that could not exist in the country of origin. The Ahmadiya, Subud and Bah’ai centers, in fact, are examples of Islamic-derived realities repressed or persecuted in their homelands, which find here a chance to re-found themselves and thrive.” (translation mine) <<https://www.bolognatoday.it/cronaca/islam-bologna-musulmani-moschee-dati.html>>.

in a positive way the global and the local”<sup>211</sup> and I would add, the old and the new. The ‘saving grace’ of these spatial machinations is the infinity of possibilities for the use and creation of shared space.

Issues of ‘common good’ and space-making have already been touched upon throughout this work, but it seems opportune to turn to them once again. Myopic views that fail to see the excessively dominating presence of past tradition within newer formulations of common good are bound to be asymmetrical with regard to spatial justice. However, there are ways of understanding common good that can avoid this outcome. To wit:

The quality that makes an entity a common good lies neither in that thing as an indivisible and inalienable whole in itself, nor in the will of the members of a community. It does not depend on their opinions, tastes, preferences, or individual and aggregate choices. People generate and regenerate it, but the good has its own (emergent) reality that does not depend on people’s desiring or benefiting from it. They contribute toward generating it, but they do not create it by themselves. Rather, they can destroy it by themselves. If they do so, they break the social links connecting them to the other people in question.<sup>212</sup>

This description gets at the idea of equidistance so crucial to any meaningful attempt at spatial justice. It comes from the principle of subsidiarity which is in fact specifically named by the Italian constitution. Article 118 recognizes that the attribution of state administrative functions are to be distributed “pursuant to the principles of subsidiarity, differentiation and proportionality”. It also includes a specification with reference to Article 117’s identification of two categories over which the State exerts control: immigration and public order and security. Article 118 clarifies that State legislation will provide “co-ordinated action between the State and the Regions” in these areas as well as in the field of cultural heritage. This book has focused on the pluralities of religious and cultural experience in urban

<sup>211</sup> References to Lefebvre and Massey made by KNOTT, *The Location of Religion*, cit.

<sup>212</sup> In a substantial literature, Donati’s essay is particularly insightful, P. DONATI, *What does “Subsidiarity” mean? The relational perspective*, in *Journal of Markets & Morality*, Volume 12, Number 2 (Fall 2009), p. 219, but see also C. MILLON-DELSON, *Le principe de subsidiarité*, PUF, Paris, 1993, M. EVANS, A. ZIMMERMANS (eds), *Global perspectives on subsidiarity*, Springer, Heidelberg, 2014; R. ALLEWELDT, *Avoiding another Brexit: the subsidiarity principle, the European Convention on Human Rights and the United Kingdom in Commonw Comp Polit* 57, 2, pp. 223-241, <<https://doi.org/10.1080/14662043.2019.1574011>>, 2019; P.G. CAROZZA, *Subsidiarity as a structural principle of international human rights law in Am J Int Law*, 97, pp. 38-79, 2003.

contexts in Italy and the need for efforts aimed at justice in their regard. Safety and security and the preservation of cultural heritage in the face of imagined attacks by immigrants come together in the horizontal subsidiarity that imbues the entire Constitution, specifically here, where it calls for coordinated action. Harmonize, correlate, interrelate, synchronize, bring together; fit together, these are the synonyms for ‘co-ordinate’. Article 118 concludes with the statement, “The State, regions, metropolitan cities, provinces and municipalities shall promote the autonomous initiative of citizens, both individual and as members of associations, to carry out activities of general interest, based on the principle of subsidiarity.”<sup>213</sup> (emphasis mine). One key to this final provision is of course how we define ‘general interest’, and here I look to Donati again, who describes the common good as “belonging to everyone and to each person, it is and remains common because it is indivisible and because only together is it possible to attain it, increase it, and safeguard its effectiveness with regard to the future.”<sup>214</sup> I have previously referred to Blaser and Cadená’s notion of an ‘uncommons’<sup>215</sup> which is ultimately quite similar as it describes a coming together of heterogenous worlds and practices which must be negotiated and interdependent. The second key here, subsidiarity, should be understood ‘diagonally’ or radially. Horizontal subsidiarity implicates the teleology and foundation of the entire Constitution because it describes the individual’s relationship to its provisions and protections which should be accessible, attainable, rather than placed on a shelf out of reach. As observed previously with rights, they cannot be identified in advance from on high by states and legal systems and then distributed to the people who would claim them. Instead, they are perpetually remolded through people’s lived experiences that lead to their own determinations of what freedom might be. The wide and open Constitution must then prick up its ears and, only after claims-making and interpretative processes, determine what is to be included or protected and how.

The Constitution aside, there are other promising indications that the need for an inclusive and just production of space is becoming more diffuse across different domains. The previously analyzed “Decommissioning and ecclesial reuse of churches Guidelines” published by the Vatican speaks of the development of a relationship between memory and innovation, the need for sustainability to shape processes of innovation, and even

<sup>213</sup> Italian Constitution official English language text available at <[https://www.senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf)>.

<sup>214</sup> P. DONATI, *What does “Subsidiarity” mean?* cit. p. 220.

<sup>215</sup> *Supra*.

suggests that canon law could be revised to create the possibility for mixed uses of sacred spaces.<sup>216</sup> In 2020, the European Commission adopted “The New Leipzig Charter - The transformative power of cities for the common good”, intended as a key policy framework document for sustainable urban development in Europe<sup>217</sup>. One of the ideas referenced therein is that of *Baukultur*<sup>218</sup> a German term that lacks an exact English equivalent but seems to describe the ‘culture of building’ and has become very trendy in Euro-American discourse as a way of referring to holistic designed living environments.<sup>219</sup> One architecture journal states that the concept “includes any, and every, human activity that changes the built environment, including every built and designed asset that is embedded in and relates to the natural environment. *Baukultur*, as a political commitment, calls for new construction and existing infrastructure and public space — including, but not limited to, monuments and cultural heritage — to be understood as a single entity.”<sup>220</sup> Apart from the potentially overly reifying word ‘entity’ this description is not far from what is being argued for here.

The title of this chapter refers to being born again, and a spatial constitutionalism requires just this kind of radical renewal. A holistic view of urban transformation requires a break from the idea of a prevailing hierarchy governing older and newer arrivals within a given territorial context. Any view cast beyond a century (or perhaps even less) takes in migrations in all directions. Anyone can become The Other. Either we are all re-born together, or else someone plays the landlord and someone else the lodger. Someone owns, belongs, while others are only temporarily tolerated. To avoid injustice, laws have to be invented that are capable of making space

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<sup>216</sup> Decommissioning and ecclesiastical reuse, cit., pp. 282-283.

<sup>217</sup> “The Charter highlights that cities need to establish integrated and sustainable urban development strategies and ensure their implementation for the city as a whole, from its functional areas to its neighbourhoods. The document is strongly aligned with the Cohesion Policy and its framework for sustainable urban development. Member States agreed to implement the Charter in their national or regional urban policies.” <[https://ec.europa.eu/regional\\_policy/whats-new/newsroom/12-08-2020-new-leipzig-charter-the-transformative-power-of-cities-for-the-common-good\\_en](https://ec.europa.eu/regional_policy/whats-new/newsroom/12-08-2020-new-leipzig-charter-the-transformative-power-of-cities-for-the-common-good_en)>.

<sup>218</sup> The Charter states, “This requires a holistic understanding of high-quality *Baukultur* as the basis of integrated planning and design processes for every man-made shaping of the built environment in European cities. It also encompasses the management and conversion of existing buildings as well as the design and construction of contemporary buildings, infrastructure and public spaces” *Ibid.*, p. 2.

<sup>219</sup> For a Swiss example, see indicatively <<https://baukulturschweiz.ch/en/what-is-baukultur/>>.

<sup>220</sup> <<https://www.world-architects.com/en/architecture-news/insight/baukultur-in-spain-davos-means-a-commitment-to-better-building>>.

for new semanticizations. Difference must be heard, intercultural translation must be a commitment. the New Leipzig Charter states that the common goal is to “safeguard and enhance the quality of life in all European towns and cities and their functional areas. No one should be left behind.” Indeed. New forms of participation are called for, as is “flexible urban governance for the common good”. If we can only keep the word ‘common’ open, participatory, on the move and with open ears, perhaps there is chance that the varieties of religious—and every other kind of—experience can ultimately, meaningfully find and make space. A constitutionally supported common space simply cannot be created without simultaneously making space for the multiplicity of Otherness.

This book has focused on sacred spaces in urban contexts and their relationship with law. I have suggested that thinking of all subjects as ‘stakeholders’/‘rights holders’ is a good place to start. I further subscribe to the view that “it is architecture’s task to render vivid to us who we might ideally be”<sup>221</sup>. Abandoned churches can be disturbing because they look and feel like failure, aspirations left to decay. Thriving sacred spaces instead enkindle, animate the desire to connect to better ways of living. Nor should we be satisfied with the dialectical view of secularism that separates the religious and the secular. The concerns of architects, urban planners engineers, environmental scientists, and landscape architects when building, managing and rebuilding cities have a great deal in common with those of theologians and people of faith. All are ultimately striving for “an agreed vision of what constitutes the good life, of what human wellbeing consists in, and of how human habitation of the environment might be undertaken in ways that enable the whole of creation to flourish.”<sup>222</sup> Coordinated horizontal efforts between law, cities, and all denizens, with a shared vision of what is at stake, is perhaps our best hope for transformation, and ultimately for survival.

In a beautiful collection on architecture and theology, Murray A. Rae cites his colleague Rowan Williams, on the role of the arts in discovery:

Art, whether Christian or not, can’t properly begin with a message and then seek for a vehicle. Its roots lie, rather, in the single story or metaphor or configuration of sound or shape which requires attention and development from the artist. In the process of that development, we find meaning we had not suspected; but if we try

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<sup>221</sup> A. DE BOTTON, cited in M.A. RAE, *Architecture and Theology. The Art of Place*, Baylor University Press, Waco, 2017, p. 2.

<sup>222</sup> M.A. RAE, *Architecture and Christian Theology*, cit., p. 25.

to begin with the meanings, they will shrink to the scale of what we already understand: whereas the creative activity opens up what we did not understand and perhaps will not fully understand even when the actual work of creation is done.<sup>223</sup>

Rae goes on to use the idea of “finding meaning we had not suspected” as a kind of guiding ethos for his work. I believe the very same ethos should animate the creativity applied to making spaces, making law. Indeed, the very physical phrasing of “opening up what we did not understand” seems a perfect conclusion to the explorations of this book. Categorical frameworks must be opened up, regulations, buildings themselves, long locked and closed. These are not utopic fantasies. People are already engaged in projects that demonstrate a willingness to open up the categorical boundaries to do what is needed for the more general good will. Rae cites a project in Pretoria, South Africa that began as an effort of local churches to provide housing for the needy which has since expanded into a major social housing development that provides homes for over 2000 people.<sup>224</sup> The project was not an overly religious project but rather a response to local needs much like the community in Fisksätra, Sweden, described earlier in this chapter, who took responsibility for assisting migrant communities. Rae describes in some detail the biblical vision of the covenant relationality between God and his people which “is not realized through abstract metaphysical propositions or mediated through some otherworldly spiritual experience. Covenant relationality between God and humanity takes place; it requires space (and time) in which to unfold and grow and to be realized in full.” It is a promise aimed at a future horizon. In this reading, sacred spaces “are places in which the promise is received, renewed, and celebrated, and where its full realization is anticipated through the liturgy of the people.”<sup>225</sup> If we think of this liturgy in an expansive way, again, in its etymological vestments of action in space, action on space, then we may find continuity along the semantic spectrum of well-being and flourishing how we allow space to be infused, formed, made.

As people multiply and move so must the spaces to which they belong, and which belong to them. Can we think of people as the artists of their lives? Writing their stories with metaphors and configurations that require attention and development, and then translation and protection? I think

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<sup>223</sup> M.A. RAE, *Architecture and Theology. The Art of Place*, cit., p. 4.

<sup>224</sup> M.A. RAE, ‘*Architecture and Christian Theology*’, cit., p. 23.

<sup>225</sup> *Ibid.*, p. 8.



it would be best if we did. Troubling sacred spaces can remain active rather than passive, urging action rather than describing an observed conviction. Urban justice and freedom need not be at odds. Rather, they could be co-conspirators in the pursuit of new worlds, worlds we do not yet suspect, that move in multidirectional and transformative ways making a peaceable kingdom for one and all.

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The global explosion of interconnectedness that is the modern condition puts us in closer contact than ever before, in all our contained multitudes, all our variety that yearns for freedom, yearns for space. The term ‘religious space’ is much more than churches, mosques, temples, or holy lands but instead reflects pressing concerns about how to live in our ever-more plural cities, how to define the lines between the freedom of one and the freedom of another. This book invites the reader to consider that the issues of ‘religious space’ are instead relevant for inhabitants of every space, everywhere. Analyzing what law is and does, what space is and does, are crucial to this enterprise. Could a spatial constitutionalism approach inspire new viable solutions? What is at stake is nothing less than urban justice.

### **Melisa Liana Vazquez**

Studies intercultural law & religion as a lens to explore creative interdisciplinary solutions to contemporary conflicts in the relationship between law and religion. She studied at Brown University and the University of Rome, La Sapienza, earning a PhD in Theory of Legal Systems. Her latest publications include, “Neither Matter nor Spirit. The ambivalent substance of digital legal personhood and its theological antecedents,” (*International Journal for the Semiotics of Law*), “Eco-theo-logical hope. Subjectivity, Religions, and Human Rights: a translational approach,” (*Oxford Journal of Religion and Law*, forthcoming) and the monograph *Secularisms, Religions and Law: a legal-cultural inquiry* (*Torri del Vento*).

