European Court Endorses Concept of Neutrality

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Editor's note: CSLR Visiting Fellow Andrea Pin, appointed professor of public comparative law at the University of Padua (Italy), offers an updated version of his thoughts on church and state issues confronting modern Italy after the announcement of a major European Court of Human Rights decision.

The recent decision of the European Court of Human Rights against the presence of the crucifix in Italian public schools is much more than a secondary opinion of some judges about a very practical and even annoying controversy. The great debate that has taken place after the judgment shows that something very important lies beneath.

Italian society is struggling with contemporary issues of religious freedom for new minorities, bioethics, same sex marriages, euthanasia, as many other countries do. All these topics are debated at the political as well as the constitutional level, and all of them touch the public role of religion. Due to the heavy social weight of the Catholic Church, religious thought plays a strong role in political and legislative processes, influencing electors and politicians. Therefore, one of the main questions is what role should religious belief have in the public square?

This discussion involves the legal domain, since both supporters and opponents of the public presence of religion recall the secular character of the Italian state. The discussion thus comes to deal with the Italian version of separation of church and state: some scholars endorse a strong – French-like – separation, while others tend to call for a more flexible relationship between the two spheres.

In the Italian Constitutional Courts, both interpretations of secularism can be found. The framing of the constitution was undoubtedly influenced by the Catholic faith: the constitutional provision that can be said to contemplate some sort of separation between church and state is almost a literal quotation of an encyclical letter of the Pope Leo XIII, Immortale Dei (1885). This explicit choice of the framers gives evidence of an endorsement of Catholic thought. Moreover, the refusal of any hostile approach towards religion is demonstrated by their deliberate refusal to use the word “laicita’” to define such a relationship between church and state, because it could give the impression of proximity with the French anti-religious institutional attitude.

The first 40 years of republican life (1948-1988) were characterized by the Constitutional Court’s pursuit of religious freedom, which had been restricted during the fascist period. In 1989, the Constitutional Court affirmed that Italy is a secular state (“Stato laico”), therefore using the wording that the framers had refused. Nevertheless, the court did not change its friendly attitude towards religion: far from endorsing any form of hostility, it maintained that the primary purpose of Italian secularity was to give room to religious needs of the population.

But some years later, the Constitutional Court moved towards a stronger separation between church and state. The Italian version of secularism was defined in terms of neutrality of the state, and the freedom of religion was to become a part of a broader attitude of the institutions.
This wording showed its consequences in the field of a very controversial issue: the presence of the crucifix in public schools, which is mandatory according to some provisions of the 1920s. Actually, some courts maintained that the crucifix was to be considered inconsistent with the constitution because it violated the principle of neutrality, and not simply because it could endanger the religious conscience of the students. On the contrary, other courts affirmed that the crucifix shouldn’t be removed because it showed the true Christian origin of the constitutional values of liberty, equality and solidarity.

The cultural war that has taken place about the crucifix is meaningful to understand the two main cultural and political trends that are dividing Italy. Some endorse neutrality because they believe this to be the most useful tool for the governance of a pluralistic country, and therefore call for a weaker role of the Catholic Church in the public square; others believe that the Catholic Church must still play a major role in culture and politics because Italy owes it the fundamentals of its civilization and the achievements of its constitutionalism, which could not survive if it is reduced to silence. Through its judgment, the European Court of Human Rights seems to have clearly endorsed the first point of view: that’s why the decision has a powerful political impact.

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