



diritto & religioni

Semestrale
Anno XIX- n. 1-2024
gennaio-giugno

ISSN 1970-5301

37



**LUIGI
PELLEGRINI
EDITORE**

Diritto e Religioni
Semestrale
Anno XVIII – n. 1-2024
Gruppo Periodici Pellegrini

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Direzione e Amministrazione:

Luigi Pellegrini Editore srl
Via Luigi Pellegrini editore, 41 – 87100 Cosenza
Tel. 0984 795065 – Fax 0984 792672
E-mail: info@pellegrinieditore.it
Sito web: www.pellegrinieditore.it

Direzione scientifica e redazione

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Tel. 338-4950831
E-mail: dirittoereligioni@libero.it
Sito web: rivistadirittoereligioni.com
Indirizzo web rivista: rivistadirittoereligioni.com

Autorizzazione presso il Tribunale di Cosenza.
Iscrizione R.O.C. N. 316 del 29/08/01
ISSN 1970-5301

Classificazione Anvur:

La rivista è collocata in fascia “A” nei settori di riferimento dell’area 12 – Riviste scientifiche.

Diritto e Religioni

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- *Court of Cassation, Section Tax, judgement of 15 May 2024, no. 13415*

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(Tasi - burden of proof - religious and cult activities - exemption due)

Part III

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DANIELE FERRARI (ed.), *Orientamento sessuale e libertà religiosa. Percorsi e sfide nel diritto internazionale ed europeo*, il Mulino, Bologna, 2023, pp. 441

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EMANUELE TUPPUTI, *Accompagnare, discernere ed integrare verso il bene possibile alla luce di Amoris laetitia*, Rotas, Barletta, 2024 (**Lorenzo Lorusso**)

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Sustainable secularism as a tool for managing religious diversity: a framework for European Democracies (and for the industrial relations) in the perspective of European jurisprudence and Robert Audi's theory

La laicità sostenibile come strumento per gestire la diversità religiosa: un quadro per le democrazie europee (e per le relazioni industriali) nella prospettiva della giurisprudenza europea e la teoria di Robert Audi

VINCENZO PACILLO

ABSTRACT

This study explores the conceptual evolution of secularism into a sustainable legal and political paradigm within European constitutionalism, guided by the influence of Robert Audi's theory and the jurisprudence of the European Court of Human Rights (ECtHR). The transformation from confessional states to secular nations in Europe, marked notably by the institutional recognition of religious freedom as detailed in Article 9 of the European Convention on Human Rights, signifies a shift towards a "sustainable secularism." This new model advocates for a dynamic balance between religious freedom, state neutrality, and social cohesion, adapting to societal changes while promoting equal respect and opportunities for all citizens, irrespective of their religious affiliations.

The study discusses the implications of sustainable secularism for the legal frameworks of European states and in the industrial relations, emphasizing the need for laws and norms to maintain neutrality and avoid favoritism towards any religion or worldview, adopting instead a governance model that integrates and respects diverse religious perspectives within public life.

Sustainable secularism, therefore, is positioned as a crucial, adaptable framework that ensures the ongoing relevance and effectiveness of secularism in contemporary society. It aims to uphold foundational values of freedom of conscience and equality, fostering a stable, pluralistic, and inclusive environment where diverse beliefs can coexist without competition. This framework not only prevents sectarianism but also promotes a public

* This article has been developed in the framework of the Action 10 of the FAR Dipartimentale 2023 of the Department of Linguistic and Cultural Studies of University of Modena and Reggio Emilia. I would like to thank Professor Robert Audi for agreeing to read the initial draft of this article and for his insightful comments, which I have endeavored to fully incorporate.

policy that respects individual rights and maintains formal equality, adapting to the unique requirements of different societal situations based on the principles of fundamental rights and human dignity.

KEYWORDS

Sustainability; secularism; religious freedom; industrial relations; models of relations between Church and State

RIASSUNTO

Lo studio propone il modello di “laicità sostenibile.” Questo nuovo modello promuove un equilibrio dinamico tra libertà religiosa, neutralità dello stato e coesione sociale, adattandosi ai cambiamenti sociali e promuovendo rispetto e opportunità uguali per tutti i cittadini, indipendentemente dalle loro affiliazioni religiose.

Lo studio discute le implicazioni della laicità sostenibile per i sistemi giuridici degli stati europei e all’interno delle relazioni industriali, sottolineando la necessità che il quadro normativo mantenga la neutralità ed evitino favoritismi verso qualsiasi religione o visione del mondo, adottando invece un modello di governance che integri e rispetti le diverse prospettive religiose nella vita pubblica.

La laicità sostenibile mira a sostenere i valori fondamentali della libertà di coscienza e dell’uguaglianza, favorendo un ambiente stabile, pluralistico e inclusivo in cui diverse credenze possano coesistere senza competizione. Questo quadro non solo previene il settarismo, ma promuove anche una politica pubblica che rispetti i diritti individuali e mantenga l’uguaglianza formale, adattandosi alle esigenze uniche delle diverse situazioni sociali basate sui principi dei diritti fondamentali e della dignità umana.

PAROLE CHIAVE

Sostenibilità; laicità; libertà religiosa; relazioni industriali; modelli di relazioni tra Chiesa e Stato.

SUMMARY: *1. History – 2. Concepts – 3. Sustainable Secularism – 4. Practices – 5. In the workplace – 6. Final remarks.*

1. History

It was January 15, 1850 when – during the debate on the education bill drafted by the extra-parliamentary commission chaired by Count de Falloux, Minister of Education (*Projet de loi établi par la Commission extraparlamentaire réunie par le ministre Falloux*, hereafter referred to as the Falloux Project) – Victor Hugo spoke as a member of the legislative National Assembly, representing the Right and elected in the département de la Seine in the 1849 elections. He defended the monopoly of free and compulsory public educa-

tion, free from clericalism, and the compulsory teaching of Catholicism.

Hugo interpreted the Falloux Project as a betrayal of one of his greatest ideals: free education (for all levels of education) and compulsory education (only for primary school), provided by the state, alongside the freedom to establish and manage private schools under strict state control. In fact, according to Hugo, the control must be particularly rigorous, free from any religious interference: in the field of education, the state must be secular¹.

There are several points to delve into. First of all, it is necessary to understand what Hugo means by the term “état laïque,” considering that there is no complete definition, whether from a political, philosophical, or legal perspective, of the term “laïcité” at that time.

Hugo claims to refer directly to François Guizot’s speech on April 25, 1844, in the Chamber of Peers, in which the Minister of Foreign Affairs of the third Soult cabinet clearly linked the secularism of the state to freedom of thought, freedom of conscience, and all other fundamental freedoms.

Indeed, in that debate, the expression “état laïque” seems, in Guizot’s sense, to already be in common use in political discourse. Victor Cousin, just a few days later (on May 3, 1844), also in front of the Chamber of Peers, clarified that a secular state should not be understood as being hostile to religion but rather as a territorial entity with original sovereignty (not derived from any religion) that does not favor any of the religions practiced within its borders. Abbot Henri Maret, who was previously the director of the newspaper *L’Ère nouvelle*, founded by him, together with Ozanam and Lacordaire, also referred to the concept of état laïque, albeit in a polemical manner compared to Guizot’s intervention².

Hugo, in his speech on January 15, 1850, therefore synthesizes and organizes the fundamental characteristics of the secular state that had emerged from the previous political debate: the state is secular when it enjoys original sovereignty, not derived from religious norms or clerical powers, and when it independently establishes the fundamental principles upon which sovereignty is exercised – including the inviolable freedoms of the individual and the reference points of educational action as managed by the education system funded and organized by the public administration.

Furthermore, for Hugo, the state is secular when it does not favor any of the religions present in its territory (*l’Église chez elle et l’État chez lui*), ensur-

¹ MICHEL WINOCK, *Victor Hugo dans l’arène politique*, Paris, Bayard, 2005, p. 46 ff.

² MAYYADA KHEIR, *Chapitre 2. Le vocabulaire de la laïcité en France au XIX siècle*, in VALÉRIE AMIRAU, DAVID KOUSSENS, *Trajectoires de la neutralité*, Presses de l’Université de Montréal, Montréal, 2014, pp. 37-47.

ing full freedom of conscience for all and effective neutrality, especially with regard to the right to education.

The transition from the specific and particular idea of “*état laïque*” to a general and abstract concept, both philosophical-political and legal, of “*laïcité*,” is generally attributed to Ferdinand Buisson and his use of the term “*laïcité*,” which appears in the first part of Volume II of the *Dictionnaire de pédagogie et d’instruction primaire*, published by Hachette in 1887. In that context, Buisson speaks of “*laïcité*” as a neologism capable of synthesizing, in a single word, the idea of the necessary independence of public institutions and public authorities from the influence of the Catholic Church and all other religious denominations, “*la délimitation profonde entre le temporel et le spirituel*”³.

Indeed, the use of the term “*laïcité*” in a general and abstract sense, both politically and legally, was not so common before 1887. Monarchist notary Pierre Pradié, in his extensive work “*Traité des rapports de la Religion et de la Politique, de l’Eglise et de l’Etat dans la société moderne*” published in 1874, manages to use the term “*laïcité*” only once and exclusively in reference to the issue of education⁴. Moreover, the Republican jurist Victor Plessier, in a short historical work reconstructing the story of the free school in La Ferté-Gaucher, uses the term “*laïcité*” sparingly, but develops it in the context of the denominational neutrality of institutions⁵.

It is probably the Parisian philologist Émile Littré, a positivist republican and Freemason, one of the fiercest opponents of the Commune and one of the most uncompromising supporters of the impossibility of any amnesty for the Communards, who made the most comprehensive and complex use of the term “*laïcité*” in the 1870s. In his detailed study “*Restauration de la légitimité et de ses alliés*” (1873), he elaborates a political theory according to which, following the events of 1789 and the influence of revolutionary thought, monarchy, nobility, and clergy can no longer claim any legitimate participation in the government of the nation⁶. In this work, the use of the term “*laïcité*” is extensive and widespread, like in Jules Ferry’s speech in the Chamber on October 23, 1880, delivered in the context of the debates preceding the law of March 28, 1882, on the secularization of education. In this speech, Ferry pro-

³ FERDINAND BUISSON, “*Laïcité*”, In *Dictionnaire de pédagogie et d’instruction primaire*, Hachette, Paris, 1887, p. 1469 ff.

⁴ PIERRE PRADIÉ, *Traite des rapports de la religion et de la politique de l’Eglise et de l’Etat dans les sociétés modernes*, V. Palmé, Paris, 1874, p. 273 ff.

⁵ VICTOR PLESSIER, *Histoire d’une école gratuite de Filles charitables à la Ferté-Gaucher*, Meaux, 1873, p. 33 s.

⁶ EMILE LITTRÉ, *Restauration de la légitimité et de ses alliés*, Paris, 1873, p. 11 ff.

poses to distinguish between religious or denominational neutrality, political neutrality, and philosophical neutrality: only the first one will be the subject of the policy of the opportunists, or rather all the governing forces committed to the secularization of education and French society⁷. Now, this idea closely resembles the concept of *laïcité* developed by Jean Macé, in which *laïcité* is synonymous with neutrality, that is, the removal of public schools from any interference and any denominational doctrine: the “shift” of French secularism toward denominational neutrality, or the equal indifference of public institutions, especially schools, toward the religious affiliation (or non-affiliation) of citizens and the dogmas of any religion, strongly resembles the vision of the relationship between the state and denominations that we call “unsectarian.” This concept would later be absorbed into a notion of secularism developed by the doctrine of Georges Holyoake⁸.

The principle of secularism, understood as a principle capable of ensuring the distinction between the temporal and the spiritual, of guaranteeing freedom of thought and worship, and of rejecting any form of “secular arm” for the Catholic Church, became a cornerstone of the political constitution of post-revolutionary France. But it must be pointed out that in France, from the beginning of the 20th century, *laïcité* no longer equates to denominational neutrality; it rather becomes a political and legal principle of anti-congregationist and anti-Catholic struggle. *Laïcité* is involved in a sort of evolution towards a more hostile and radically anti-Roman Catholic Church stance of classic anticlericalism, which embodies a postulate aimed at suppressing the threat that certain religious experiences may pose to republican institutions.

It is no coincidence that we used the term “postulate”: secularism has been used since 1900 as a foundational concept on which the constitutional framework is built, even though it is never mentioned in the constitutional laws of 1875. In the 1903 edition of the “*Précis de droit administratif et de droit public général*,” Maurice Hauriou places secularism, along with freedom of conscience, among the cornerstone principles of French ecclesiastical law, asserting that it involves a duty of neutrality of public powers and equality among all denominations. However, Hauriou warns that from a legal standpoint, secularism cannot extend to create a complete religious neutralization of the public space or the theoretical basis for political persecutions aimed at undermining individual or collective religious freedom⁹.

⁷ Cfr. PIERRE KAHN, *La laïcité*, les Éditions du Cavalier Bleu, Paris, 2005, p. 47 ff.

⁸ GEORGE JACOB HOLYOAKE, *The Principles of Secularism Illustrated*, London, 1871.

⁹ MAURICE HAURIOU, *Précis de droit administratif et de droit public général: à l'usage des étudiants en licence et en doctorat ès-sciences politiques*, Paris, Larose, 1903, p. 132 ff.

However, at the end of the XIXth century, in France we were in front of a clear tendency, within certain political circles, to disregard Hauriou's warning: anticlerical *laïcité* turned, in 1905, into separation, while unsectarian secularism is structured around the distinction between civil matters and religious matters.

2. Concepts

The Strasbourg Court explicitly rejects this coincidence between secularism and separatism. It began using a concept of “laïcité/secularism” in its judgment in the case of *Kalac v. Republic of Turkey*¹⁰: in that case, it limited itself to emphasizing the compatibility of the principle of secularism – as stipulated in Article 2 of the Turkish Constitution – with the principles and values on which the 1950 Rome Convention is based. This conclusion, which would be reaffirmed in other decisions, is actually based on a series of principles that the judges of the European Court for Human Rights had begun to elucidate in previous years and which must be considered a common heritage of all the states signatory to the Convention.

Some years later, the Strasbourg Court developed its own concept of secularism in the framework of the 1950 Rome Convention¹¹. According to the European Court of Human Rights, secularism is a foundational principle that ensures the neutral and impartial organization of religious beliefs, faiths, and practices within a democratic society. It acts as a guarantor of religious pluralism, crucial for the democratic ideal, which entails allowing individuals the freedom to hold or not to hold religious beliefs and to practice or not to practice a religion. This interpretation underscores secularism not merely as a separation of religion and state but as an active framework within which the state supports and maintains the conditions for religious harmony, tolerance, and public order¹².

The ECtHR's perspective on secularism emphasizes the state's role as an arbiter that must balance the freedom of religion with the need to protect the rights and freedoms of others, ensure public order, and uphold the values of democracy. This balancing act requires the state to intervene in cases where

¹⁰ *Kalaç v. Turkey*, judgment of 1 July 1997, no. 20704/92, §§ 25 – 27 and 30.

¹¹ *Refah Partisi and Others v. Turkey*, judgment of 13 February 2003, Nos. 41340/1998 and other 3, §§ 90 – 95; *Dogru v. France*. judgment 4 December 2008, case No. 27058/05;

¹² JAVIER MARTÍNEZ-TORRÓN, *State neutrality and religious plurality in Europe*, in COLE DURHAM, DONLU THAYER (eds.), *Religion, Pluralism, and Reconciling Difference*, Routledge, London, 2019, p. 159 ff.

religious expressions threaten to undermine these values, even preemptively, if necessary, to prevent the implementation of policies or actions that are incompatible with the principles of the Convention and democracy¹³.

Furthermore, the court articulates that secularism involves the state's duty of neutrality and impartiality, which is incompatible with any power on the part of the state to assess the legitimacy of religious beliefs or to favor one religion over others. This duty extends to ensuring mutual tolerance among different religious groups, highlighting secularism's role in fostering a public space where diverse religious expressions and practices can coexist without leading to conflict or the infringement of individual rights¹⁴.

The ECtHR also recognizes that in societies where multiple religions coexist, it may be necessary to place restrictions on religious freedom to reconcile the interests of various groups and ensure that everyone's beliefs are respected. This approach to secularism acknowledges the complexity of managing religious diversity in a way that upholds the principles of democracy and human rights, indicating that secularism, as understood by the court, is not a rigid separation but a dynamic process of negotiation and accommodation.

In essence, secularism according to the ECtHR is a principle that upholds the respect for individual freedom of conscience and religion while ensuring that this freedom does not impede the rights of others, public order, or the democratic and secular values of the state. It embodies a commitment to religious pluralism, mutual respect, and tolerance, essential for the peaceful coexistence of different faiths and beliefs in a democratic society¹⁵.

No surprise that the Court decided to develop its own paradigm of *laïcité*/secularism. The birth of a legal concept is attributed to a legislator or a judge who derives its definition without feeling bound by pre-existing systematic frameworks but only aims at the practicality of the provision or normative interpretation they choose to develop. The great Italian jurist Arturo Carlo Jemolo derives from this creative process the essentially relative value of legal

¹³ MARIA-JOSÉ VALERO-ESTARELLAS, *Neutrality, Margin of Appreciation and Religious Autonomy: Advancing Pluralism and Non-Discrimination in Strasbourg*, in *Revue du droit des religions* [Online], 15 | 2023, Online since 24 May 2023, connection on 08 April 2024. URL: <http://journals.openedition.org/rdr/2131>; DOI: <https://doi.org/10.4000/rdr.2131>, § 4

¹⁴ JULIE RINGELHEIM, *State Religious Neutrality as a Common European Standard? Reappraising the European Court of Human Rights Approach*, in *Oxford Journal of Law and Religion*, 2017, p. 24 ff.; ROLAND PIERIK, *State Neutrality and the Limits of Religious Symbolism*, in JEROEN TEMPERMAN (ed.), *The Lautsi Papers: Multidisciplinary Reflections on Religious Symbols in the Public School Classroom*, Brill, Leiden, 2012, p. 201 ff.

¹⁵ MELANIE ADRIAN, *The principled slope: religious freedom and the European Court of Human Rights* in EFFIE FOKAS and JAMES T. RICHARDSON (eds), *The European Court of Human Rights and Minority Religions: Messages Generated and Messages Received*. Routledge, New York, 2017, p. 18 ff.

concepts, their nature as pseudo-concepts constructed through a process of generalization lacking an essential characteristic, namely universality. However, we must not forget the historical factors that operate in the background: therefore, each individual member state of the Council of Europe must be considered to hold its own conception of secularism, which must be taken into account in both individual decisions concerning it and as a constituent of a minimum common denominator of the concept of secularism understood as a common constitutional tradition of the European legal space.

So let's now delve into the principles that make up the minimum common denominator of the concept of secularism understood as a common constitutional tradition of the European legal space.

a) The first of these principles is that the State must maintain a role as a neutral and impartial organizer of the exercise of different religions, cults, and beliefs¹⁶. Only in this way can public authorities fully guarantee public order, religious peace, and tolerance in a democratic society. This duty of neutrality and impartiality of the State is incompatible with any power of evaluation by the State regarding the legitimacy of religious beliefs or their modes of expression. It requires ensuring pluralism and genuine “horizontal tolerance” among groups and individuals with different worldviews¹⁷.

b) The second principle is that pluralism, tolerance, and openness are necessary elements for a society to be considered “democratic.” Democracy is not reduced to the constant supremacy of the opinion of a majority but requires a balance that ensures just treatment for minority individuals and prevents any abuse of a dominant position. Pluralism and democracy must also be based on dialogue and a spirit of compromise, which necessarily involve different concessions by individuals that are justified for the sake of safeguarding and promoting the ideals and values of a democratic society¹⁸. Now it's time to focus on this principle, that will be the core content of the rest of this intervention.

2.1 It is entirely evident that in the era in which we live, the religious experience is undergoing a profound transformation, characterized by the coexistence of some structural changes. For example, from a statistical point of view, the number of people declaring affiliation with a religious group is decreasing

¹⁶ MARCO VENTURA, *Dynamic Law and Religion in Europe. Acknowledging Change. Choosing Change*, EUI, Fiesole, 2013, p. 3 and 13.

¹⁷ MARIA-JOSÉ VALERO-ESTARELLAS, *Neutrality, Margin of Appreciation and Religious Autonomy: Advancing Pluralism and Non-Discrimination in Strasbourg*, cit., § 2

¹⁸ EFFIE FOKAS, *Messages from the European Court of Human Rights on Religion, Secularism, Tolerance and Pluralism*, in VYACHESLAV KARPOV, MANFRED SVENSSON (eds), *Secularization, Desecularization, and Tolerance*, Palgrave Macmillan, Cham, 2020, https://doi.org/10.1007/978-3-030-54046-3_14, p. 279 ff.

both in Europe and the United States, where the percentage of individuals who declare religion to be “very important in their lives” is currently around 50%¹⁹. The number of Catholics, both in Europe and the USA, is declining less significantly than that of Protestants, while atheists and agnostics are on the rise, especially in the age group under 26²⁰. Conversely, in Asia and the Pacific region, although the percentage of those declaring no religious affiliation is slightly lower than in Europe, there is a clear trend of growth in the population affiliated with a religious group²¹. Therefore, it can be said that while the western part of the northern hemisphere of the globe shows signs of a significant decline in the importance and size of religious affiliation, other geographic contexts show a rather different result, with clear implications for the geopolitics of religious denominations.

In addition, although it is more complex to provide certain data on non-institutionalized spirituality and the actual observance of religious precepts, there has certainly been an increase in the West in the number of religions seeking or having sought legal recognition in recent times, as well as an increase in associated groups claiming some connection with the “religious” dimension, both in a transcendent perspective and with an immanent tendency.

This plurality of the religious dimension on a global scale is accompanied, at the local level, especially in the West, by an increasingly vibrant presence of religions as homogeneous, strong, and persistent “counter-cultures” within the social landscape²². This ethical plurality is guaranteed by the institutional, denominational, and cultural pluralism on which all the constitutional charters of Western democracies are based. Religious freedom, as a subjective legal situation aimed at guaranteeing the freedom to believe and not believe, to belong and not belong to a religious group, can and should also be a safeguard for the freedom to live according to one’s conscience. In other words, an open and plural society must be able to ensure, albeit with limits, the free pursuit of one’s own life project through a complex set of choices and actions, even

¹⁹ <https://www.pewresearch.org/short-reads/2018/12/05/how-do-european-countries-differ-in-religious-commitment/>.

<https://www.pewresearch.org/religion/2015/11/03/chapter-1-importance-of-religion-and-religious-beliefs/>

²⁰ <https://www.pewresearch.org/religion/2024/01/24/religious-nones-in-america-who-they-are-and-what-they-believe/>.

²¹ <https://www.pewresearch.org/religion/2015/04/02/asia-pacific/>.

²² PETER L. BERGER, *The Many Altars of Modernity. Toward a Paradigm for Religion in a Pluralist Age*, DeGruyter, Boston/Berlin, 2014, p. 15; LENE KÜHLE, ULLA SCHMIDT, BRIAN ARLY JACOBSEN and PER PETERSSON, *Religion and State: Complexity in Change*, in INGER FURSETH (ed.) *Religious complexity in the Public Sphere: Comparing Nordic Countries*, Palgrave Macmillan, New York, 2017, p. 81 ff.

when they are not expressions of the dominant culture but of a counter-culture linked to religious precepts.

2.2. As the European Court of Human Rights states, the need to coexist with different visions of the good life and different religious counter-cultures within social life is an indispensable prerequisite for protecting the moral freedom of every individual, as it is the indispensable prerequisite for guaranteeing the exercise of behaviors that directly result from the need to comply with a religious precept.

Ethical-religious plurality can be guaranteed²³ by denominational and cultural pluralism only in a state that is simultaneously democratic, secular, and based on respect for human rights²⁴. Secularism can no longer be understood

²³ The choice between ‘protected’ and ‘guaranteed’ indeed touches on a subtle but important distinction. The term ‘protected’ might suggest a passive defense against infringement, whereas ‘guaranteed’ implies an active effort by the state to ensure the conditions necessary for pluralism and moral freedom. Regarding John Rawls, he indeed views pluralism primarily as an inevitable consequence of liberal democracy under the veil of ignorance, where diverse doctrines emerge and deserve protection to ensure fairness and equality. However, extending Rawls’ argument, one might posit that democracy does not merely ‘protect’ pluralism as an existing state but actively ‘guarantees’ it as a fundamental principle necessary for its ethical framework. This active role aligns with the state’s commitment to create a society based on respect for human rights and secular governance, thereby ensuring that all beliefs have the space to coexist and be practiced freely.

²⁴ Rawls introduces the concept of “reasonable pluralism” which underpins much of his later work. According to this idea, a stable and just society is not merely tolerant of a variety of religious doctrines but actively integrates them into the public discourse. This integration is based on the principle that adherents of different religions must find common ground—what Rawls refers to as an “overlapping consensus”—on political principles that are derived not from any single religious doctrine but from shared democratic ideals. John Rawls’s theory invites significant commentary, particularly around the intersection of religion and public discourse. Richard Rorty initially critiqued Rawls’s approach by highlighting how religious arguments could disrupt democratic deliberations. He advocated for relegating religious beliefs to the private sphere to maintain secular public reasoning. However, over time, Rorty’s position evolved to recognize that religious perspectives, when translated into universally accessible terms, could indeed enrich public debates. This shift underscores a dynamic understanding of the role religion might play in a pluralistic society.

Following a somewhat parallel line, Jürgen Habermas introduces the concept of a “post-secular” society, which not only accommodates but actively engages religious reasoning within public discourse. Unlike Rawls, who maintains a firmer boundary between private beliefs and public reason, Habermas advocates for a dialogue that incorporates religious views into the public sphere, provided they are articulated in a language that is accessible to all citizens. This approach suggests a more integrated model of democracy where secular and religious reasoning coexist, enhancing democratic deliberation through a genuine exchange of perspectives.

In presenting Rorty’s and Habermas’ critiques of Rawls’s ideas, it becomes evident that both philosophers contribute to a nuanced debate about the role of religion in democratic societies. They offer perspectives that, while diverging from Rawls’s original framework, push the discussion forward by proposing mechanisms for including religious viewpoints in a manner that supports, rather than undermines, democratic values and societal cohesion. See JOHN RAWLS, *Political Liberalism*, Expanded Edition, New York: Columbia University Press, 2005, p. 147 ff.; RICHARD RORTY, *Religion as Conversation-Stopper* in *Common Knowledge* 3:1 (Spring), pp. 1-6; RICHARD RORTY, *Religion in the Public Square: A Reconsideration*, in *The Journal of Religious Ethics*, Vol. 31, No. 1 (Spring,

as a peculiarity of some legal systems, such as the French or Turkish ones, in which historical-political experience has marked a particular neutralization of the public sphere, but it is now an integral part of the common EU constitutional tradition²⁵ in accordance with which fundamental rights must be interpreted, according to Article 52, paragraph 4 of the EU Charter of Fundamental Rights. In this perspective, it should be emphasized that the Italian Constitutional Court, in judgment no. 102 of 2020, reiterated the use of the EU Charter of Fundamental Rights as an “interpretative tool for corresponding constitutional guarantees,” highlighting the “relationship of mutual implication and fruitful integration” that binds constitutional principles and rights to those recognized by the Charter. Consequently, the scope and latitude of supranational guarantees, interpreted in harmony with common constitutional traditions, “reverberate on the constant evolution of constitutional precepts.” In this perspective, as Stefania Ninatti writes, “the recognition of European constitutional roots confers a particular relevance to this interpretative tool since the respect for the identities of the various Member States, together with the recognition of everything that unites them, has always been at the heart of the community experiment.”²⁶

2003), pp. 141–149; JÜRGEN HABERMAS, *Notes on Post-Secular Society*, in *New Perspectives Quarterly*, 25, 2008, pp. 17–29.

²⁵ As András Sajó points out, secularism in democratic constitutionalism is both a legal necessity and a social imperative, deeply rooted in Enlightenment principles such as those advocated by Condorcet. It stresses the importance of secular public reasoning and education as essential for fostering critical thinking and informed participation in democracy. This approach challenges denominational education systems that might prioritize religious doctrine over critical, secular education, potentially compromising the development of necessary democratic faculties.

Historically, secularism has been pivotal in asserting the sovereignty of the people, a principle crystallized during the French Revolution which posits that all state power must derive from the people rather than any divine authority. This historical shift marked the move away from the divine right of kings to popular sovereignty, emphasizing that no entity, including religious institutions, should have inherent power independent of the people’s will.

In the realm of constitutional law, secularism plays a crucial role in safeguarding individual freedoms, particularly the free exercise of religion. It ensures that religious beliefs do not dominate public life or infringe upon other fundamental rights, thereby preserving a pluralistic society where diverse beliefs can coexist peacefully. This commitment to secularism helps maintain a balance between religious autonomy and the collective control necessary to protect individual rights and uphold democratic principles.

Overall, constitutional secularism is not merely about limiting religious authority in public affairs; it is a comprehensive framework that upholds the values of freedom, equality, and democratic participation. It serves as a foundational principle that sustains secular processes vital for the progressive development of law and society, ensuring the integrity and inclusivity of the democratic process by keeping religious influence in check within public and legal discourse. See ANDRAS SAJÓ, *Preliminaries to a concept of constitutional secularism*, in *International Journal of Constitutional Law*, Volume 6, Issue 3–4, July–October 2008, pp. 605–629, <https://doi.org/10.1093/icon/mon018>.

²⁶ STEFANIA NINATTI, *Dalle tradizioni costituzionali comuni all’identità costituzionale il passo è*

The link between secularism and the “common constitutional tradition” of the Member States is due to the need for these states to protect freedom of religion and belief (Article 10 of the EU Charter of Fundamental Rights) in harmony with the constant jurisprudence of the Strasbourg Court, according to which states must act as neutral and impartial organizers of the exercise of different religions and beliefs, avoiding the role of institutional defenders of a dogmatic truth (whether religious or secular). Furthermore, we must not forget that the Union is founded “on the values of respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, including the rights of persons belonging to minorities” (Article 2 of the Treaty on European Union); values that only a democratic system founded on neutrality and denominational impartiality can effectively achieve.

Hence, a pivotal question in order to clarify the relationships between secularism, pluralism and “spirit of compromise”: can secularism legitimize measures aimed at preventing citizens from participating in public debate using religious arguments to advocate for policies inspired by a confessional worldview?

3. Sustainable secularism

From a philosophical-political perspective, at least two views of secularism oppose each other. The stricter conception advocates for a cohesive secularism based on universal values and an integration that involves erasing particularisms in the public space. The group of scholars following this theory particularly criticizes the wearing of religious symbols, viewing them not only as a tool of female submission but also as a manifestation of communal ties that oppose republican universalism. For universalists, republican identity should take precedence over particular identities, which implies a certain distrust of communitarianism and a strong valorization of the community of citizens, envisioned as a unified and sovereign body. This secularism, son of republican universalism, draws on the Enlightenment tradition and the political model of the French Revolution, where the general will is supposed to transcend particularisms to form a coherent whole. Citizens and residents, from this perspective, are free to believe or not believe, and they are free to associate to organize their religious or non-religious life in community structures, but the State renounces the idea that these associated groups may have special recognition. According to proponents of strict secularism, measures

breve? Riflessioni introduttive, in *Stato, Chiese e pluralismo confessionale*, Rivista telematica (www.statoechiese.it), 31, 2019, p. 111.

of religious accommodation that public authorities can take to promote the inclusion of minorities are in radical contrast to the ideal of equal opportunity, which requires that all individuals enjoy the same spaces of freedom regardless of their professed or unprofessed religion. Furthermore, respect for constitutional public order and the need to ensure social cohesion would seem to require a certain degree of moderation in expressing their religious convictions in the public sphere, as well as a categorical duty to refrain from making political claims on religious grounds²⁷.

The second approach to religious pluralism rejects rigid secularism and proposes a model of secularism as institutional pluralism in which the state recognizes and supports all religions impartially. According to this view, by relegating religion to the private sphere, strict secularism asserts a too narrow conception of freedom of religion, making it too difficult for religious groups to maintain their identity. Advocates of institutional pluralism aim to promote a positive conception of religious freedom, whereby religious groups should receive state support to concretely promote and guarantee the faculties associated with it. In this perspective, strict secularism seems to offer little protection to religious minorities and tends to reproduce historical inequalities among different faiths; institutional pluralism defends, on the contrary, an inclusive secularism that recognizes and integrates various cultural, ethnic, and religious identities: proponents of this approach consider that each individual's identity is shaped by personal and collective narratives that deserve to be freely expressed in the public space²⁸.

In this paper, I advocate a third idea of secularism ("sustainable secularism"), that in my vision is quite far from the perspective chosen by the Strasbourg Court in its decisions.

My starting point is that the European Union's commitment to the 2030 Agenda aligns closely with the broader framework of social sustainability, which encompasses the ability of a society to enhance the well-being of its members across generations through equity, diversity, connectivity, and democratic governance. This approach is evident in the EU's strategic emphasis on policies that support individual and collective welfare, ensuring that all members of society have access to necessary resources, social participation, and a quality of life characterized by security, health, and education.

²⁷ On this regard, see HENRI PENA-RUIZ, *Dieu et Marianne: Philosophie de la laïcité*, Paris, Presses Universitaires de France, 2005; CATHERINE KINTZLER, *Qu'est-ce que la laïcité?*, Vrin, Paris, 2007.

²⁸ TARIQ MODOOD, *Moderate Secularism and Multiculturalism*, in *Politics*, 1, 2009, pp. 71-76; PHILIPPE PORTIER, *La politique du voile en France : droits et valeurs dans la fabrique de la laïcité*, in *Revue du droit des religions*, 2, 2016, pp. 61-81.

In the context of sustainability, which includes environmental, economic, and social dimensions, social sustainability forms a crucial foundation that supports and interconnects with the other aspects. By upholding principles of equity, diversity, and inclusion, sustainable secularism helps foster a socially sustainable society where all individuals can thrive, regardless of their religious beliefs or lack thereof. This ensures a balanced approach to development that respects and integrates the needs of diverse communities, aligning closely with the broader goals of social sustainability.

The integration of social sustainability within the broader concept of sustainability highlights that a truly sustainable future requires attention to the social structures influencing human relationships and societal organization. The EU's policies emphasize that the needs of current and future generations should be met not only in environmental and economic terms but also in terms of social justice, equality, and the adaptability of social systems: a secular governance ensures that policies reflect the needs and interests of diverse populations, promoting a more inclusive and just society; it creates a social environment where individuals can freely express their beliefs and participate in public life (and this contributes to a higher quality of life, as individuals feel valued and respected regardless of their religious affiliations) and – in the end – it ensures that future generations inherit a society where religious freedom and diversity are respected, which aligns with social sustainability's focus on creating a better future for subsequent generations.

Building on the premise that sustainability involves enhancing and preserving social quality, which implies fostering and reinforcing social cohesion, inclusion, and security, this framework advocates for a societal model in which all religious identities can coexist without discrimination. Within this model, the state plays a pivotal role by ensuring equal treatment and respect for all religious groups, thereby creating an environment where diverse beliefs and practices are integral to the social fabric. In this context, secularism is redefined as a strategic mechanism for managing religious diversity. It seeks to secure the right to freedom of conscience, protect religious identities, promote equality among citizens, and strengthen social cohesion. Importantly, this approach to secularism requires public authorities to remain neutral in religious matters, which can be achieved without necessitating a formal separation between Church and State.

Sustainable secularism requires that every individual receives the same consideration and is treated with equal respect regardless of their choices in religious matters; it demands that the State neither favors nor impedes any spiritual option, refrains from privileging one or more religions over others, and from privileging religion over irreligiosity or vice versa. It calls for policies that are consistent with equal opportunities that every person, regardless of their belief,

must enjoy to pursue their life project, whether it is religious or secular, and at the same time to assure to all the religious people the full participation into the secular political life, but under the condition that religious contributions must undergo a transformative process to ensure they align with the cognitive demands of a liberal, post-secular society. This transformation involves renouncing any monopolistic claims over interpretation and adapting to a hermeneutic of self-reflection that respects the pluralistic nature of modern public life.

All the religious contributions to the political arena must be stripped of their particularistic elements and reframed in terms that are accessible and justifiable to all citizens, irrespective of their religious or non-religious backgrounds. Thus, in sustainable secularism's framework, the legitimacy of political decisions in a constitutional state hinges on their ability to be impartially justified by universally accessible reasons, ensuring that they can garner acceptance across the diverse spectrum of religious and secular viewpoints.²⁹ The model of secularism proposed, which aims to balance religious freedom with social cohesion and state neutrality, complements the concerns raised by Wolterstorff and addressed by Habermas in their recent contributions³⁰. Both perspectives recognize the potential cognitive burdens and exclusions faced by religious citizens when secular states require non-religious justifications for political participation: thus, sustainable secularism seeks to mitigate these challenges by ensuring that policies do not favor any religious or irreligious standpoint, thereby facilitating a more inclusive environment. This approach aligns with Habermas's advocacy for a political space where religious citizens are not required to abandon their religious reasoning in informal public debates, thereby enhancing pluralism and participation without compromising the principle of state neutrality.

Wolterstoff and Habermas both recognize that the strict requirement for non-religious rationalizations in political discourse can marginalize religious viewpoints, thereby reducing pluralism in the public sphere. Habermas, in

²⁹ JÜRGEN HABERMAS, *Religion in the Public Sphere: Cognitive Presuppositions for the "Public Use of Reason"* by Religious and Secular Citizens, in ID., *Between Naturalism and Religion*. Cambridge: Polity Press, 2008, pp. 114–148.

³⁰ As Wolterstoff notes, the requirement to always provide non-religious rational justifications for proposed political stances might impose an excessive cognitive burden on religious citizens, thereby relegating their thought to a form of irrelevance in the public sphere, which clearly prejudices pluralism. Building on this observation, Jürgen Habermas seeks to ensure the political inclusion of religious citizens by limiting the Rawlsian clause related to political deliberation at the institutional level, and thus proposes the removal of the obligation to provide reasons not based on religious beliefs in political deliberations occurring within what he terms the "informal public sphere. NICHOLAS WOLTERSTOFF, *The Role of Religion in Decision and Discussion of Political Issues*, in ROBERT AUDI and NICHOLAS WOLTERSTOFF, *Religion in the Public Square*, Rowman & Littlefield, London, 1997, p. 105.

response, advocates for the adaptation of political inclusion norms to allow religious reasons within the “informal public sphere.” This area of public interaction, less bound by institutional constraints, offers a space where religious citizens can freely participate without the cognitive burden of translating their beliefs into strictly secular terms. This approach not only facilitates a more inclusive and vibrant discourse but also aligns with the concept of “sustainable secularism.” Sustainable secularism aims to balance the free expression of diverse religious and secular beliefs with the need for cohesive and neutral governance; by fostering a free, informal public sphere, sustainable secularism ensures that all voices, including those grounded in religious traditions, contribute meaningfully to societal development and the democratic process³¹.

This proposal has some consequences.

The first concerns the duty – not only political but also legal – to express a genuine “horizontal tolerance” towards politically religiously grounded opinions, allowing those expressing such opinions to enjoy equal consideration and respect, as Ronald Dworkin would put it, compared to non-religious citizens, without being a priori excluded from the political arena in the broadest sense.

The second consequence is connected to the necessity that outside parliamentary chambers and judicial forums, outside places where administrative power is exercised or where decisions that affect the community are made in an institutionalized manner, it should be possible to articulate a politics based on religious arguments and thus construct a politically religiously grounded act.

Firstly, it must be emphasized that, according to the Court, secularism implies the obligation to ensure, through legislation, ideological and confessional pluralism. This means that signatory states of the 1950 Rome Convention must establish participatory democracies based on free elections and provide space for every believer or non-believer to express their values within an individual or community “life project” and to organize social groups that elevate these values to the rank of legal principles. All of this should be done, of course, while respecting other principles and values expressed in the Rome Convention, promoting interreligious dialogue and taking appropriate measures to ensure tolerance among different religious groups.

In a certain sense, this position tries to combine Habermas’ ideas with the theoretical view of Charles Taylor and William Connolly.

Jürgen Habermas envisions Western societies as “post-secular,” where religion persists in public life despite ongoing secularization, advocating for a secularism that fosters state neutrality rather than excluding religious di-

³¹ Cfr. CRISTINA LAFONT, *Religion and the public sphere: What are the deliberative obligations of democratic citizenship?* in *Philosophy & Social Criticism*, 35, 2009, p. 131 ff.

ologue. He proposes a “post-metaphysical” framework where religious and secular arguments intermingle through an “institutional translation proviso,” allowing religious viewpoints to be expressed in universally understandable terms³². This facilitates a cooperative learning process where secular and religious citizens enhance public discourse. Building on this, Charles Taylor critiques traditional secularism for inadequately managing societal pluralism and suggests a “model of diversity” that better accommodates the varied beliefs in modern societies. Taylor’s approach emphasizes active engagement with diverse worldviews, promoting a richer public discourse that values contributions from both religious and secular perspectives³³. William Connolly extends these ideas into “deep pluralism,” critiquing the rigid boundaries of Neo-Kantian secularism and advocating for a dynamic, responsive public sphere that continuously integrates an array of cultural and philosophical positions. Connolly emphasizes the importance of an agonistic democracy where diverse beliefs are actively contested and negotiated, challenging traditional notions of a neutral public sphere and calling for a flexible and evolving dialogue that includes all voices. Together, these thinkers provide a robust critique of traditional secularism and sketch a nuanced blueprint for a post-secular public sphere that embraces the complexities of modern, pluralistic societies³⁴.

In line with this theoretical background, the Strasbourg Court stated that believers are allowed to establish political parties with religious inspiration whose goal is to create legal norms that respect the principles of democratic constitutionalism; they can also form pressure groups capable of influencing the

³² JÜRGEN HABERMAS, *Notes on Post-Secular Society*, cit., p. 28 f.

³³ CHARLES TAYLOR, *Why We Need a Radical Redefinition of Secularism*, in JUDITH BUTLER, JÜRGEN HABERMAS, CHARLES TAYLOR, CORNEL WEST, *The Power of Religion in the Public Sphere*, edited by EDUARDO MENDIETA, JONATHAN VAN ANTWERPEN, Columbia University Press, New York, 2011, p. 48 ff.

³⁴ William Connolly advocates for “deep pluralism” as a crucial alternative to combat the ongoing minoritization and demonization of diverse identities in modern societies. He stresses that without a richer, more multifaceted form of pluralism, societies risk perpetuating a politics of demonization, restriction, and repression of diversity. Deep pluralism involves the active engagement and negotiation between various metaphysical views without relying on predefined foundations. This approach challenges the traditional secularist separation of public argument and private faith, promoting instead a continual contestation of identity, unity, and sovereignty as defined by the modern secular nation-state. Connolly, aligning with the principles of agonistic democracy, emphasizes the need for a dynamic and contentious public sphere where different views are not only expressed but are also critically engaged with each other. This form of pluralism requires altering the norms of legitimacy to include these debates within the very structure of state institutions, thereby transforming the traditional norms of state neutrality and the separation of church and state. Similar to Charles Taylor, Connolly sees secularism not as a static or unchangeable institution but as an evolving political arrangement, influenced by the complex pressures of pluralization that continuously reshape its meaning and societal implications in a post-secular context. See WILLIAM E. CONNOLLY, *Some Theses on Secularism*, in *Cultural Anthropology*, 26, 2011, pp. 648–56.

processes of legal production and interpretation towards the observance of their reference religious norms. But this kind of political participation is limited by the necessity to balance these religiously inspired contributions with the secular principles outlined in the 1950 Rome Convention. This balancing act ensures that while religious groups are given the freedom to influence and shape public policy, it must not infringe upon the rights and freedoms of others, nor undermine the secular foundation of the state. This framework, thus, underscores the importance of maintaining a public discourse that respects and incorporates diverse viewpoints, ensuring that no single ideology, religious or otherwise, dominates to the detriment of pluralism and mutual respect in society.

As is well known, the jurisprudence of Strasbourg has extensively relied on Article 17 of the ECHR regarding the prohibition of abuse of rights to limit the scope of expressions of thought that can be considered protected by Article 10, excluding from the legally protected sphere any form of expression that may disseminate, promote, or justify hatred or discrimination based on intolerance for reasons (ethnic, national, or) religious, provided that any restrictions or sanctions imposed are proportionate to this legitimate purpose. The rationale behind this choice is undoubtedly to safeguard the equal dignity of all human beings: as argued by Jeremy Waldron, such respect implies the right – guaranteed to every person – to be a full member of society, to be able to rely on effective social interaction regardless of their belonging to a particular category or minority group.

It is also worth noting that the Strasbourg Court has expressed reservations about the full compatibility of Islamic law with the non-derogable principles expressed in the Rome Convention³⁵. This does not imply that there is a presumption – neither *juris tantum* nor *juris et de jure* – of incompatibility between political action of Islamic inspiration and the foundational principles/values of European constitutionalism. Rather, the Court's orientation is to impose – within the confines of the Council of Europe – a mandatory space for evaluation – under conditions of equality for all actors involved – aimed at testing the possibility of admitting political parties and movements that declare themselves inspired by religious precepts within the arena of political competition. This assessment must be of a political-administrative nature, even before it becomes the subject of criminal action.

In sum, the principle of sustainable secularism of the State prohibits citizens from organizing one or more political parties with the aim of producing legal norms – valid for all citizens – that transpose purely confessional norms into the

³⁵ *Refah Partisi and others v. Turkey*, judgment of 13 February 2003, nos. 41340/98, 41342/98, 41343/98 and 41344/98, §§ 87 – 100.

state's legal system without rational justification. This prohibition is justified by the assumption that a state inspired by democratic constitutionalism is not an ethical state; both freedom of opinion and freedom of religion imply state neutrality and the necessity to base legislative production processes on the reasonableness of normative provisions, rather than on their divine and/or faith-based origin³⁶.

The guarantee of freedom of religion cannot be effective if it does not entail openness to all religious and philosophical convictions and if the state does not refuse to rely on religious authorities and/or to use confessional arguments to justify (or simply motivate) its political, legislative, administrative, and judicial actions.

Where the Court of Strasbourg seems to endorse a non-sustainable secularism is when it upholds a form of neutrality that extends to both public institutions and individuals in public spaces: this approach supports restrictions on the wearing of religious symbols to ensure the neutrality of the public sphere, as seen in cases like *Dahlab*³⁷, *Leyla Şahin*³⁸, and *S.A.S. v. France*³⁹. These decisions emphasize the balance between individual rights to religious expression and the state's interest in maintaining a secular public sphere, citing the need to maintain the conditions for 'living together' as a justification for restricting religious symbols in public spaces.

However, the Court seems to forget that, as European societies become increasingly diverse due to globalization and migration, the traditional models of the secular public sphere might need to be adapted. Policies that were once seen as neutral may now be perceived as exclusive or discriminatory, requiring a reevaluation of what neutrality means in a multicultural context.

The ECtHR's approach faces legal and ethical challenges, particularly regarding the principle of proportionality and necessity in a democratic society: determining the least restrictive means to achieve the intended public benefit while respecting individual rights is crucial. Moreover, the court provides states a wide margin of appreciation to decide the scope of these restrictions,

³⁶ As Yaniv Roznai points out, the principle of secularism is rigorously protected, as evidenced by the prohibition on political parties that seek to undermine it. The Turkish Constitutional Court has dissolved numerous parties for allegedly violating this principle—six under the 1961 constitution and eighteen under the 1982 constitution. This ban on certain political parties acts as a preemptive measure to prevent any attempts to alter or eliminate the foundational secular principles of the constitutional order, effectively barring these parties from election and from having any opportunity to propose changes to the constitution's core tenets. See YANIV ROZNAI, *Negotiating the Eternal: The Paradox of Entrenching Secularism in Constitutions*, in *Michigan State Law Review*, 2, 2017, p. 272.

³⁷ *Dahlab v. Switzerland*, Judgment of 15/02/2001, no. 42393/98.

³⁸ *Leyla Şahin v. Turkey*, Judgment of 10/11/2005 (Grand Chambre), no. 44744/98.

³⁹ *S.A.S. v. France*, Judgment of 1/7/2014 (Grand Chambre), no. 43835/11.

acknowledging the diverse cultural contexts across Europe. These decisions have potentially overemphasized theoretical harms of the personal moral liberty to the “public sphere” without sufficient evidence of actual impact on the rights of others, highlighting ongoing debates about the integration of religious diversity and secular values in European public life.

The (un)sustainability of this type of secularism, endorsed by the European Court of Human Rights in regulating public expressions of religion, is a subject of ongoing debate, influenced by various factors. This neutrality, aimed at social integration and cohesion, risks alienating religious minorities and reducing their public participation, which could lead to social fragmentation. Balancing freedom of religious expression with public order and societal values is complex, especially as policies that might once have been viewed as neutral could now be seen as exclusive or discriminatory in increasingly diverse societies affected by globalization and migration. Additionally, these neutrality policies face legal and ethical challenges, particularly around the principles of proportionality and necessity in a democratic society. The political climate and public perception also play crucial roles in shaping and sustaining these policies. There is an underlying concern that strict neutrality may suppress the diversity and pluralism it aims to protect, potentially weakening democratic values rather than strengthening them. As societal norms, legal interpretations, and demographics continue to evolve, the debate over the balance between individual rights and collective interests will remain a dynamic and critical area of discourse.

4. Practices

Hence, the contemporary discourse on secularism, particularly in the face of religious plurality and the challenges of modernity, illuminates a spectrum of critical perspectives that reveal an underlying tension: a pervasive fear about secularism’s implications for religious life and personal moral liberty. This fear manifests differently across various scholarly critiques, each articulating concerns that secularism, in its Western manifestation, might not only misinterpret but actively endanger the delicate balance between religion and public life.

A focal point of this discourse is Talal Asad’s rigorous examination of secularism’s cultural relativism⁴⁰. Asad posits that secularism, rather than being a neutral or universal principle, is deeply embedded in the cultural and histori-

⁴⁰ TALAL ASAD, *Formations of the Secular: Christianity, Islam, Modernity*, Stanford University Press, Stanford, CA, 2003.

cal contexts of Western societies. He argues that the enforcement of secular norms transforms religion into a private, rather than public, matter, undermining its communal significance and traditional public role. Asad critiques the traditional dichotomy between the sacred and the profane, suggesting that this binary oversimplifies and misrepresents the complexities of these concepts as they have been experienced in different cultural contexts.

Asad's analysis is grounded in a critique of Western secularism, particularly how it has been influenced by European imperial and colonial agendas. He argues that the concept of the sacred, as understood in post-Enlightenment Europe, was often used to justify colonial dominance over other cultures, which were then labeled as superstitious or uncivilized. This framing allowed for the imposition of European norms and values under the guise of civilizing missions.

Moreover, Asad mourns the loss of a more embodied, sensory experience of the divine, which he sees as having been displaced by more abstract, intellectualized conceptions of faith in the secular age. He contrasts this with Muslim practices where faith is lived through bodily practices, and pain and emotion are integral to religious experience, challenging Western secular notions of embodiment and individuality. This critique highlights a fear that secularism may not merely separate church and state but may also privatize religion to the extent that it loses its vital public and communal character. Asad's work suggests that the secular state, far from being a liberating force, may exercise a form of cultural imperialism, imposing a specific, historically contingent form of secularism on diverse societies with different religious traditions.

Similarly, Rajeev Bhargava's concept of a "principled distance" addresses the fear that traditional Western secularism enforces a rigid separation between religion and state, potentially marginalizing religious identities and expressions. Bhargava advocates for a more nuanced understanding of secularism, one that recognizes the public importance of religion and allows for its influence in the state's affairs, provided such involvement promotes foundational secular values like freedom and equality. This approach seeks to mitigate fears by proposing a flexible, context-sensitive secularism that respects religious diversity and its potential to contribute positively to public life and civic virtue⁴¹.

The discourse also features Joseph Weiler's critique of secularism from the perspective of European identity, wherein he revolves around his concern that there exists a "Christian deficit" in the EU's public and legal discourse. Weiler

⁴¹ RAJEEV BHARGAVA, *Rehabilitating Secularism*, in CRAIG CALHOUN et al.(eds.), *Rethinking Secularism*, Oxford/New York, 2011, pp. 105–109

perceives a deliberate omission or “thundering silence” regarding the role of Christian values in the formation and ongoing cultural and moral fabric of the European Union: an omission that – he argues – is not just a neutral stance but an actively enforced form of secularism, which he terms “EU-enforced laïcité.”⁴²

Moreover, Joseph Weiler’s analysis of the Lautsi decision, where the European Court of Human Rights ultimately permitted the display of crucifixes in Italian public schools, underscores his broader critique of European secularism. Weiler argues that religious symbols like crucifixes should be viewed not as governmental endorsement of religion, but as part of a country’s cultural heritage, reflecting historical and social realities rather than active proselytism. He advocates for a pluralism that includes religious and secular beliefs in the public sphere, critiquing a narrow secularism that seeks to exclude religious symbols and thereby, in his view, diminishes true pluralism. Weiler emphasizes that state neutrality should allow various beliefs to coexist, supporting a more inclusive interpretation that respects Europe’s diverse cultural backdrop. By analyzing the Lautsi case, Weiler highlights the tension between universal secular principles and local cultural practices, advocating for a model of secularism that respects and integrates Europe’s religious heritage, thus fostering a more democratic society. His commentary on the case reflects a call for a culturally sensitive approach to secularism that aligns with democratic values and enhances European identity, rather than undermining it through strict exclusionary practices⁴³.

In contrast to these critiques, Robert Audi’s work stands as a beacon of how secularism might be reconceived to allay widespread fears. Audi advocates for identifying the ideal conditions under which secularism and religion could coexist harmoniously, aligned with Enlightenment ideals. He seeks a version of secularism that is genuinely areligious, neither favoring nor disadvantaging any religion or irreligion. Audi’s vision suggests a public space defined by a secularism that accommodates religious diversity in a substantive rather than merely formal manner, promoting a balanced coexistence where private religious beliefs and public secular ethics inform and enrich each other.

This collective apprehension towards secularism, as evidenced by the

⁴² JOSEPH H.H. WEILER, *Christian Europe? Europe and Christianity: Rules of Commitment*, in *European View*, 6, 2007, p. 145.

⁴³ JOSEPH H.H. WEILER, *State and Nation; Church, Mosque and Synagogue – On Religious Freedom and Religious Symbols in Public Places* in MARY ANN GLENDON et al.(eds.), *Universal Rights in a World of Diversity: The Case of Religious Freedom*, Rome, The Pontifical Academy of Social Sciences, 2012, pp. 578-588.

works of Asad, Bhargava, Weiler and others, stems from a concern that secularism, as traditionally conceived and practiced in the West, might not only fail to accommodate but actively suppress the rich tapestry of religious life and expression. Each critic, in their way, articulates a fear that secularism could lead to a homogenized public square, devoid of the moral and ethical richness that religious traditions bring. In these troubled waters, Audi appears to navigate with a proposal that, while acknowledging the challenges, offers a path towards a sustainable secularism that respects religious diversity without fear, aiming for an inclusive public sphere where secular and religious values coexist and inform the common good. Audi points out that the principle of secularism allows -better to say, it imposes – the legislative power to protect the freedom of conscience⁴⁴. This protection can occur even when it is based on governmental policies grounded in religious roots; however, it's important to note that such policies must be subject to precise limitations.

Firstly, the “protection of identity principle” is a crucial aspect of Audi’s theory on the role of secularism in liberal democracy. This principle – the principle that “the deeper a set of commitments is in a person, and the closer it comes to determining that person’s sense of identity, the stronger the case for protecting the expression of those commitments tends to be” – suggests that the deeper a set of commitments is embedded within an individual’s sense of self, the more compelling the justification must be for protecting the expression of those commitments⁴⁵; it is deeply intertwined with concepts of personal identity and freedom of expression, recognizing that certain beliefs and values are so integral to an individual’s identity that they warrant special consideration and protection under the law.

Audi emphasizes that the degree to which a belief or value is ingrained in a person’s identity affects how important it is to protect its expression. This isn’t just about religious beliefs but any deep-seated convictions that form the core of an individual’s sense of identity. These include philosophical, moral, or cultural values: identity is not a static or singular concept but is composed of various elements that an individual considers central to who they are. Pro-

⁴⁴ The discussion on secularism as presented here utilizes a term not explicitly coined by Audi but broadly reflective of his conceptual framework—referred to in his works as the ‘principle of secular rationale’ and alternatively as the ‘principle of natural reason.’ This paper acknowledges the slight variance in terminology and appreciates the need for precise language to avoid misinterpretation. The term ‘principle of secularism’ was employed to encapsulate these concepts holistically. Future discussions will adhere strictly to the terminological precision Audi establishes, ensuring clarity and fidelity to the original philosophical constructs.

⁴⁵ ROBERT AUDI, *Democratic Authority and the Separation of Church and State*, Oxford University Press, Oxford, 2011, p. 42.

tecting the expression of these elements is crucial because they significantly influence a person's self-conception and autonomy.

Protecting deep-seated beliefs and values is also a way to prevent the alienation of individuals from society: if people feel that their core identities are disregarded or oppressed, they may feel alienated or disenfranchised, which can lead to social fragmentation and conflict. Audi argues that a liberal democracy should strive to minimize such alienation by respecting and protecting the diverse identities of its citizens⁴⁶.

Insofar, Audi's idea of protecting identity principle navigates the delicate balance between freedom and coercion in a society. While it advocates for the freedom to express deeply held beliefs, it also acknowledges that this freedom can be justifiably limited if such expressions significantly harm others or impede their rights. Thus, the protection for personal identity does not advocate absolute freedom but rather a balanced approach that considers the potential impacts on the wider community. According to Audi, citizens have both a legal and moral right to support governmental policies based on religious reasons. However, he argues that citizens also have a moral and juridical obligation—according to the principle of secular rationale (or “principle of natural reason,” as more recently termed)—not to support or advocate for such policies solely on religious grounds. To support this argument, he introduces—aside from the “protection of identity principle”—the “principle of secular rationale,” which posits that citizens in a democracy have a responsibility to provide adequate secular reasons when advocating for or supporting laws that restrict human conduct. This responsibility centers on respect for persons and the associated trait of civic virtue, though it is not an absolute obligation.

Audi defends this principle against potential criticisms and misconceptions. He emphasizes that the Principle of Secular Rationale is not exclusive; citizens can fully comply with it while also supporting their chosen policies on religious grounds. Furthermore, Audi argues that the principle is necessary to prevent religious strife and maintain social cohesion within a diverse society. By requiring citizens to offer secular reasons for their favored policies, it helps minimize the polarization and conflicts that may arise when religious reasons alone drive public decision-making.

Audi seems to find a good balance between freedom of conscience, which guarantees each individual the possibility of self-determination and being-in-the-world with their own life plan, and a series of norms valid *erga omnes* and incompatible with the life plan imagined and pursued by some individu-

⁴⁶ ROBERT AUDI, *Religious Commitment and Secular Reason*, Cambridge University Press, Cambridge, 2000, pp. 5-6 and 34.

als. However, it must be pointed out that when this life-plan is rooted into an ethical imperative of particular firmness and deriving from a *Weltanschauung* generally recognized as having positive value, even in front of the principle of secularism, constitutional norms protecting freedom of conscience and religion require the legislator who acted according to the principle of secular rationale to adopt a series of clauses aimed at eliminating a conflict of duties that would prevent the full development of the personalities of those individuals.

Religious citizens often face a dilemma in a society that upholds public reason. Their deeply held religious beliefs may be incompatible with the secular reasoning required by public reason. This creates a tension between their religious convictions and their civic duties in the public sphere.

According to Audi, the requirement to provide secular, publicly accessible reasons should primarily apply to political officials and institutions that are part of the formal public sphere, such as parliaments, courts, and ministries. These officials play a specific role in making and implementing policies and laws that affect society at large. Ordinary citizens engaging in public discourse in informal settings, like everyday conversations, public debates, and civic activities, should not be subjected to the same rigorous requirement of secular reasoning. Instead, they should have the freedom to express their convictions, even if they are based on religious beliefs, as long as they respect the basic rules of civility and engage in constructive dialogue, and, above all, give adequate secular reasons for governmental coercion. By doing this, they carve out room for religious preferences to play a constructive, though appropriately constrained, role in their political choices.

The institutional translation proviso, therefore, seeks to balance the fundamental rights of religious citizens to express their beliefs with the responsibilities of political officials to provide secular justifications for public policies. In other words, religious citizens are not burdened with translating their deeply held beliefs into secular language unless they hold positions of political authority.

This approach has the advantage of making the informal public sphere more inclusive, allowing for a broader range of perspectives and beliefs. It also acknowledges that social norms, values, and attitudes can evolve through open dialogue and debate.

Audi provides an interesting example of the limitations of using religious arguments in the public sphere, using the issue of the legitimacy of abortion as an example. In order to combine the different ethical and religious views of the juridical status of the fetus, Audi argues that a secular state ought to base its juridical decision on such a controversial topic on two pillars:

The role of reasonable disagreement: Audi argues that the reason society

should avoid banning abortion is that reasonable people can have divergent opinions on the issue of fetal personhood. Audi believes that because there is no consensus on when exactly “personhood” begins in the fetus, in human development the state should refrain from imposing an absolute ban on abortion. In other words, the lack of a definitive agreement on when human life begins should lead to a stance of maximum tolerance⁴⁷.

Presumption of innocence: Audi bases much of his argument on the “presumption of innocence.” This presumption implies that actions should be considered innocent (i.e., permissible) until it is appropriately proven that they are wrong. This presumption is closely tied to the principles of liberal democracy and individual rights, emphasizing that people should be free to do as they wish unless there are compelling reasons to prohibit it⁴⁸.

Audi contends that prohibiting abortion on the basis of other people’s religious views or opinions would be a violation of democratic principles. If the moral status of abortion is uncertain or controversial, then imposing a legal ban on it would be unjustified. Audi believes that the presumption of innocence should also extend to abortion, allowing women to make autonomous choices in this matter.

In this framework, the right to freedom of conscience and religion is, therefore, a bulwark in defense of ethical pluralism. It prevents the majority of citizens from imposing a certain worldview unconditionally, destroying or undermining the possibility of pursuing an unorthodox ethics based on imperatives of supreme cogency. At the same time, it seems to me that the recognition of the right to conscience objection, obviously in the strict framework of the constitutional principle, could be a good opportunity to balance the different religious, ethical and political views on sensitive topics.

5. In the workplace

The principle of sustainable secularism manifests its pivotal role in the juridical debate in the case of wearing religious symbols in the workplace. In this case, secularism has been seen as a valid justification to ban the use of religious symbols by the employees, at least when the employer wants to follow the politics of religious neutrality. The problem is what kind of “private secularism” can be granted to an employer by the secular state, in the per-

⁴⁷ ROBERT AUDI *The Ethics of Belief and the Morality of Action: Intellectual Responsibility and Rational Disagreement*, in *Philosophy*, 86, 2011, pp. 5-29.

⁴⁸ ROBERT AUDI, *Religious Commitment and Secular Reason*, cit., p. 195 ff.

spective of a sustainability of secularism that ought to not infringe upon the personal freedoms of individuals while maintaining a balance with corporate policy requirements. This tension reflects the broader issue of how secularism in a pluralistic society should not merely enforce uniformity, but rather accommodate diversity and promote mutual respect among varied beliefs. Thus, sustainable secularism should aim to ensure that the rights of all employees are respected, allowing for a display of personal beliefs where it does not significantly disrupt the operational efficacy or the fundamental rights of others within the workplace.

The debate on religious symbols in the workplace emerges as a quintessential case highlighting the existing tensions between the need to uphold corporate neutrality and the right of individuals to express their cultural and religious identity. Policies of neutrality, often invoked to justify bans such as wearing the hijab, clash with fundamental principles of individual freedom of expression and the right to align one's work persona with personal values, thus illuminating the complexity of interactions between personal identity, corporate culture, and national and supranational regulations.

The decision by the Court of Justice of the European Union in the case of *Samira Achbita versus G4S Secure Solutions NV*⁴⁹, while addressing these issues, fails to provide a satisfactory resolution to the raised concerns. The Court was tasked with evaluating whether such a prohibition, imposed by a corporate regulation that forbids all employees from displaying outward signs of political, philosophical, or religious beliefs, constituted direct discrimination against a Muslim woman. The Court's negative response was based on the interpretation that the rule applies indiscriminately to all workers, without creating distinctions or preferential treatments.

However, this analysis proves inadequate for two main reasons. Firstly, it overlooks the specific discrimination experienced "as a Muslim woman," failing to recognize how the rule disproportionately impacts those whose religious, cultural, and gender identities are interconnected, making the veil a central aspect of their identity not easily separable from a "neutral" self-image. Secondly, it misses the true essence of "direct discrimination," which is not limited to a lack of uniformity in treatment but includes less favorable treatments based on prohibited reasons, such as religion or belief. The prohibition on wearing religious symbols, in fact, was specifically introduced in response to Achbita's intention to wear the veil, highlighting how the rule was

⁴⁹ Judgment of 14 March 2017, *Samira Achbita v. G4S Secure Solutions NV*, C-157/15, EU:C:2017:203.

inherently based on religious grounds⁵⁰.

This approach neglects the substance of “less favorable treatment,” which the CJEU itself has interpreted in other cases as including stereotypes, stigma, and prejudices. Equating the effect of the prohibition on Muslims who wear the veil with that on other expressions of political, philosophical, and religious beliefs ignores the significance of the veil for Muslim women. Consequently, it compromises the dignity and identity of the Muslim woman, forcing her to choose between resigning from her job or her religious identity, in deference to a patriarchal concept of corporate freedom that does not acknowledge the centrality and importance of the veil as an expression of identity⁵¹.

This approach is undoubtedly due to a certain hermeneutic difficulty in interpreting the regulatory mandate of Directive 2000/78/EC of the Council, dated 27 November 2000, which establishes a general framework for equal treatment in employment and working conditions.

In the case of the policies of neutrality adopted by G4S, the central issue is whether a requirement of ostensible neutrality and thus an abstention from the use of religious symbols can be considered a genuine and determining professional requirement. The Advocates General of the Court of Justice of the European Union have expressed contrasting opinions on this point, highlighting the complexity of interpreting the rules on genuine and determining professional requirements and the balance between pursuing a neutral corporate image and the rights of employees to freedom of expression and religion. The principle of proportionality and the strict interpretation of genuine and

⁵⁰ Shane Simms argues that it ought to be necessary to expand the definition of “direct discrimination” to include policies that are known beforehand to have a disparate impact on specific religious groups. This approach is grounded in the principle that if an employer like G4S is aware that their policy will disproportionately affect religious groups that have specific dress codes (such as Muslim women wearing headscarves), then this awareness itself should qualify the policy as direct discrimination. This is because the employer is knowingly instituting a policy that unequally burdens these groups.

⁵¹ This redefinition would have significant legal and ethical implications. Legally, it would provide stronger protections for religious expression by preventing employers from claiming ignorance or neutrality when their policies clearly discriminate against certain groups. Ethically, it aligns with broader societal values of fairness and equal treatment, reinforcing that employers should be held accountable for the foreseeable effects of their policies. Cfr. SHANE SIMMS, *Choose One: Gainful Employment or Religious Obedience – An Analysis of Samira Achbita v. G4S*, in *Chicago Journal of International Law*, 2, 2019, p. 7.

⁵¹ Joseph Weiler posits that using “neutrality” to exclude visible signs of religion effectively transforms a neutral policy into one that directly discriminates based on religion. This is because the policy explicitly targets and measures against the protected characteristic (religion or conviction), albeit under the guise of promoting a neutral professional appearance. He also delves into broader cultural and ethical concerns, highlighting Europe’s commitment to pluralism, tolerance, and religious liberty, criticizing policies that, under the pretext of neutrality, essentially segregate individuals like Achbita, forcing them to hide their religious identities. Cfr. JOSEPH H.H. WEILER, *Je Suis Achbita!*, in *International Journal of Constitutional Law*, 15, 4, 2017 pp. 879–906, <https://doi.org/10.1093/icon/moy001>.

determining professional requirements are emphasized in the jurisprudence of the Court of Justice of the European Union, as is the importance of considering the specifics of each profession and the legitimacy and proportionality of the objectives pursued by discriminatory measures.

In this vein, we have to recall Marcuse's reflections on the manipulation of needs and the construction of false needs⁵², because they find a new field of application in the debate on religious symbols, raising fundamental questions about the right to be oneself and the importance of defending the multidimensionality of one's personality against pressures towards homogenization. Marcuse, in his critical examination of advanced industrial society, highlighted how technologies and means of production, though potentially liberating, have become instruments of increasingly pervasive control, extending to the very core of our needs and desires. His analysis focuses on indoctrination and manipulation through media, advertising, and other forms of social control, revealing an illusory freedom where the true autonomy of individuals is subject to subtle yet incisive control.

The return to Hegel's conception of alienation, explored with acuity by Herbert Marcuse, underscores how the labor process itself becomes a source of alienation for the individual, a phenomenon of objectification that, although rooted in human action, seems to distance and oppose personal freedom. Marcuse, building on and developing Hegel's insights, conceives of labor not as a mere activity among others, but as the fulcrum of human existence, the means through which the individual realizes themselves in the world and becomes aware of themselves as an autonomous subject.

In this context, labor takes on a dimension of duration, permanence, and essentiality that transcends the individual work act, shaping as a constant and pervasive commitment in the individual's life. However, Marcuse points out that labor, due to its intrinsic nature of objectification, imposes on the individual a submission to external laws, transforming human action into service towards the other, and making labor itself a burden, a servitude to the thing that opposes the individual's self-realization.

In Herbert Marcuse's analysis, alienation emerges as an ontological and metahistorical condition, transcending the confines of specific historical and social contexts. Marcuse identifies in the process of objectification in labor a source of profound estrangement, where the individual, by constantly orienting their action outward, loses touch with their inner self and autonomy. This condition of alienation is rooted in the very essence of labor, considered

⁵² HERBERT MARCUSE, *One Dimensional Man*, 2nd edition, Beacon, Boston, 1991, pp. 59 – 64.

not just as an activity among others, but as the fulcrum of human existence, through which the individual realizes themselves in the world.

This perspective is part of a broader debate concerning the role of technology and machines in contemporary society. Contrary to certain Marxist interpretations that view the techno-economic base as neutral, Marcuse criticizes this view, arguing that technology and industrial organization, far from being neutral, contribute to further reification of existence; they promote a conformism and submission to the machine that limit individual autonomy and spontaneity, giving rise to a totalitarian and repressive industrial society. In this context, Marcuse's critique of technology and machines reveals a deep concern for the technological rationality that dominates and limits human existence, perpetuating alienation.

To fully understand this process, it is necessary to return to Jean-Paul Sartre, who, with his acute social ontology, introduces the concept of the 'practico-inert', outlining a framework in which objects and social structures, although the result of human action, seem to assume their autonomy, becoming obstacles to individual freedom. These elements, ranging from mechanical tools to language, from rituals to social identities frozen in stereotypes, are configured as holders of a normative power, seemingly transcendent relative to individual consciousness, yet originating from it. In this context, the freedom of religion and belief inevitably clashes with pre-existing social, political, and economic structures, which can limit or condition such freedom. In particular, the law, the embodiment of the 'practical' turned 'inert', exemplifies the tension between the human origin of the norm and its coercive and alienating character, external and independent from individual will.

Sartre urges us to take personal responsibility in the face of "ultimate questions", pushing us to reclaim our spiritual, historical, and social identity through a conscious choice of religious or non-religious belief. However, the realization of religious freedom is not solely linked to individual self-determination; it requires a favorable social and political context, an environment that not only tolerates but actively supports and promotes this freedom⁵³.

The context of a secular state emerges as the ideal solution to manage the complex dialectic between freedom and coercion, creating a regulatory system that, while it may present coercive normative structures, is capable of offering conditions for a more authentic universal freedom. The secular state, therefore, must adopt a proactive approach, removing obstacles to individual freedom and ensuring equal opportunities for the realization of every citizen's

⁵³ JEAN-PAUL SARTRE, *Critique de la Raison dialectique*, I, Gallimard, Paris, 1985, pp. 276 – 340.

personality, through anti-discrimination legislation that protects the rights of individuals regardless of race, gender, sexual orientation, religion and belief, ethnicity, or disability, and an active commitment against inequalities and social injustice, fostering a fair dialogue between the state and religious confessions, and combating ghettoization and self-ghettoization through policies of social and economic inclusion.

6. *Final remarks*

This paper primarily sought to demonstrate that sustainable secularism must not only ensure the state's equidistance and impartiality toward religions; it must also permit—except in cases of harm or real threats to the enjoyment of others' rights and freedoms—the full respect for personal identity, including religious identity. Authoritatively defined as a cornucopia that protects dignity, religious belief, political and trade union opinions, ethnicity, sex and sexual orientation, language, disability, and genetic origin⁵⁴, personal identity is today understood as the way of being of the person⁵⁵, the collection of characteristics and features that differentiate one individual from another and that—at the same time—constitute their unique and unrepeatable essence. It involves a set of peculiarities that have demographic, biological, social, psychological, relational, and emotional dimensions: some of these are immutable and connected to genetic heritage, others are imposed by family or social contexts and can only be changed with considerable complexity and after gaining awareness. Others still—especially within the psychological and relational sphere—are the result of the development of one's own feelings and way of understanding life and reality, responses to the profound questions of meaning, and one's personal and professional experiences.

Secondly, extending his exploration of the proper public role of religion to international affairs, this paper wants to highlight the significant impact of religion on relations between states, challenging the prevailing Westphalian paradigm that separates religion from international relations. According to Audi's perspective, it argues that discussions about the public role of religion should not be confined to domestic matters but should also consider its influence on international diplomacy and interactions.

Audi's extension of his framework to international affairs is considered

⁵⁴ GUIDO ALPA, *Il diritto di essere se stessi*, La nave di Teseo, Milano, 2021, p. 15

⁵⁵ ENRICO DEL PRATO, *Le basi del diritto civile*, IV ed., Giappichelli, Torino, 2022, p. 273.

particularly welcome by many because it recognizes that religion continues to shape global relations in ways that may challenge traditional views of state sovereignty. He acknowledges the global resurgence of religion and its transformative effect on international relations, emphasizing the need to account for these dynamics in contemporary political discussions.

The lesson the court should learn from Audi's perspective is that Europe has ceased to know – at least since the 1980s of the 20th century – systems of relations between the State and Churches in which, under the still-living influence of the unitary theocratic idea, the two powers tend to merge, giving rise to forms of caesaropapism. Instead, it has moved away from confessional states founded on an official religion privileged over others as the repository of the nation's founding values. From an institutional perspective, the inclusion of the right to religious freedom in the category of recognized and protected rights in the new Europe of cooperation between states represents a fundamental moment in this process of institutional secularization. This inclusion is explicitly guaranteed by Article 9 of the European Convention on Human Rights and confirmed at the level of the European Community with the judgment of the Court of Justice of the European Union of October 27, 1976, case 130-75, in which the Luxembourg Court established the need to fully protect equality without distinction of religion, renouncing any confessional temptation and identifying secularism as a cornerstone of the new Europe.

Moreover, this secularism must be sustainable in the perspective of respecting everyone's personal identity.

Secularism has progressively become an autonomous legal concept, a supranational principle of European constitutionalism, with a parameter function in relation to the laws of the states that have ratified the Rome Convention and the EU Treaty. This principle implies not only, in general, the right of each member state of both the Council of Europe and the EU to freely structure its relations with the religious communities present on its territory without impositions but also the necessity for the law not to favor any of the religions or worldviews present on the territory, refraining from taking any position capable of favoring or opposing one or more faiths. Consequently, the impossibility becomes unequivocal, both for the member states of the Council of Europe and for the member states of the EU, to structure their model of relations with religious communities according to forms of neo-Constantinianism, substantial confessionalism, or jurisdictionalism. They are forced to look at a form of "sustainable secularism": a concept that refers to a dynamic and adaptable model of secularism that aims to balance religious freedom, social cohesion, and state neutrality in a way that is enduring and responsive to societal changes. This concept involves a governance framework that does not

simply enforce a rigid separation of church and state but rather facilitates a nuanced interaction where religious diversity is respected and incorporated into public life. It ensures that all citizens, regardless of their religious or irreligious inclinations, are treated with equal respect and given equal opportunities to contribute to public discourse.

Sustainable secularism seeks to maintain neutrality of public authorities, ensuring that no religious or secular worldview is privileged over another, thereby promoting a harmonious social environment where diverse beliefs can coexist. This approach acknowledges the evolving nature of societies and recognizes that the principles of secularism may need to be reevaluated and adjusted over time to remain effective and relevant. By doing so, it aims to uphold the foundational values of freedom of conscience and equality among citizens, while also ensuring that policies and legislation foster a stable, pluralistic, and inclusive society. This model of secularism aligns with contemporary challenges and debates around the role of religion in public life, proposing a sustainable path forward that respects both individual rights and collective harmony.

Sustainable secularism ensures the equal freedom of religious denominations, not only preventing any form of disguised sectarianism but effectively guaranteeing equal enjoyment of rights and freedoms regardless of one's religious affiliation or lack thereof.

This equality in freedom prohibits public authorities from taking part in any way and for any purpose in the 'competition' between beliefs and denominations. It must be understood in direct correlation with the principle of formal equality, whereby the legislature is bound to treat equal situations equally and different situations differently. This should be done according to the principles of absolute non-negotiability, inalienability, and irrevocability recognized in fundamental rights and human dignity.