RELIGION, POLITICS AND LAW IN THE EUROPEAN UNION

Edited by LUCIAN N. LEUSTEAN and JOHN T. S. MADELEY

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EU enlargement – to countries in Central and Eastern Europe in 2004, the inclusion of Bulgaria and Romania in 2007, and increasing debates on Turkey's membership – has dramatically transformed the European Union into a multi-religious space. Religious communities are not only shaping identities but are also influential factors in political discourse. This edited book examines the activities of religious actors in the context of supranational European institutions and the ways in which they have responded to the idea of Europe at local and international levels. By bringing together scholars working in political science, history, law and sociology, this book analyses key religious factors in contemporary EU architecture, such as the transformation of religious identities, the role of political and religious leaders, EU legislation on religion, and, the activities of religious lobbies.

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forerunner of the ESDP', in A. Deighton and G. Bossuat (eds), *L'Union Européenne, acteur de la sécurité mondiale* (Paris, Soleb, 2007), and '"Enlightening public opinion": a study of NATO's information policies between 1949 and 1959 based on recently declassified documents', *Cold War History*, 7, 1 (February 2007). Email: l.risso@ reading.ac.uk

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Abstracts

European Integration, Laïcité and Religion
JEAN-PAUL WILLAIME

Laïcité, which must not be identified with the French system of church–state relations, is a European value. The fundamental principles of laïcité are established throughout Europe, though with variations according to the particular church–state relationship applicable in member countries. The three fundamentals principles of laïcité are the following: (1) freedom of conscience, thought and religion; (2) equal rights and duties of all citizens; (3) the respective autonomy of the state and religions. In Europe, the dominant model of church–state relations, which differs depending on the country in question, is one of recognised religions. This means that the respective autonomy of churches and the state is often associated with various forms of church–state cooperation. This kind of laïcité has been sanctioned by the Treaty of Lisbon.

Religion: a Solution or a Problem for the Legitimisation of the European Union?
FRANÇOIS FORET

Religion is not a competency of the European Union (EU), but has been more and more an issue on its agenda. The question is to know whether this plays in favour of the legitimisation of a supra- or transnational polity, or represents a further obstacle to it. The central hypothesis discussed here is that religion in itself is less a specific problem than a revelator of the EU difficulty in dealing with any normative reference. Several examples may be taken to illustrate this position, as a synthesis of different empirical researches. The 'Christian heritage' debate in the constitutional process has offered no key to solve the longstanding quest for a European memory. Through the institutionalisation of religions as privileged partners of European governance, the EU has tried to socialise religious actors and to make them comply with the rules of participative democracy (pluralism, mutual recognition . . .). Beyond the interactions of the policy game in Brussels, these rules do not always appear as generalised social norms. This is highlighted by the growing interventions of churches to defend their particularisms in the media or by the use of religious references – intimately linked with nationalist ones – to question European integration in old and new member states. However, these controversies on the new place of the sacred in public life tend to follow well-established patterns of political struggles, which is a reason to believe that, to a large extent, God is a 'business as usual' for the EU.

A European Battlefield: Does the EU Have a Soul?
Is Religion In or Out of Place in the European Union?
CARIN LAUDRUP

After its foundation and expansions from six to 27 member states the European Union (EU) seems to be in more disarray than ever before, whereas the Council of Europe with almost twice as many member states seems to be moving on quite successfully on a supranational level focusing on values and human rights. Both organisations were born out of the ashes of the European civil wars of the twentieth century. This article will analyse possible reasons why it is so difficult for European leaders to convince their citizens that the EU is the alternative of the twenty-first century. Why is the nation-state such a popular social construct that millions

are willing to die for it? The lens through which this analysis is carried out is the concept of civil religion as part of the answer but also as part of the problem. At the core is education, specifically religious education, instilling norms and morals. The problem is seen in that civil religious myths and rituals mould and kindle not only nationalism, but also patriotism. The solution could be added awareness that (national) religious education can promote an inclusive understanding of other nations, cultures and religions.

From Hammer and Sickle to Star and Crescent: the Question of Religion for European Identity and a Political Europe
BENOÎT CHALLAND

The paper suggests that European political identity, as a fragile project, is always in need of external significant 'others' in order to buttress a sense of common fate within the sui generis political entity of the European Economic Community/European Union (EU). Adopting a historical and diachronic perspective, the paper argues that for decades the threat of Eastern European communism represented one such external other as a gathering element for Western Europe, but that with the end of the Cold War this 'other' was gradually replaced by the threat of Islam and Islamism (and by extension Turkey's possible entry into the EU). Europe's threat was first the communist sickle; it is now Islam's crescent. Such a portrayal is obviously problematic because of its populist and simplistic appeal that has served political purposes. This needs to be questioned. The return of religion through what is currently described as desecularisation is a rather recent issue for Europe and the question of multireligious Europe ought to be taken seriously. The paper argues, in the line of Delanty, that one should adopt a civilisational approach to Europe, thus giving real space to differences within Europe, and reflect on certain biases of secularity and laïcité towards the dominant religion in various countries.

European Enlargement, Secularisation and Religious Re-publicisation in Central and Eastern Europe
DAVID HERBERT & MAX FRAS

This article investigates the relationship between closer integration into the European Union and the vitality and public presence of religion in three relatively recent accession states: Poland, Hungary and Romania. Using Moyser's (T. Moyser, Politics and Religion in the Modern World, London, Routledge, 1991) model of five levels of political secularisation, we find that there is evidence of growth of religious influence in public life in each of these societies between 1989 and 2007, while using World Values Survey data we find that different patterns of religious vitality are exhibited: growth in Romania, decline from a high level in Poland, and decline from a modest level in Hungary. We argue that to explain this religious 're-publicisation' (growth in the public presence of religion) and different patterns of religious vitality, it is necessary to move beyond secularisation theory to a model which views the social processes identified as underlying secularisation not as the direct cause of decline in religious vitality, but rather as second-order factors creating conditions which can tend, depending on intermediate variables, as much towards growth in public presence of religion as to decline.

Cracks in a Façade of Unity: the French and Italian Christian Democrats and the Launch of the European Integration Process, 1945–1957
LINDA RISSO

Despite the fact that Christian Democracy is generally considered the main engine behind the launch of European integration, closer inspection reveals that behind a façade of unity

the Christian Democratic parties supported the integration process for very different reasons and to very different degrees. Historical research has often overlooked the parties' internal disagreements and the heterogeneous reasons behind their political action. To demonstrate this point, this article focuses on the European policies of the French and Italian Christian Democratic parties between the end of the Second World War and the launch of the Common Market in 1957. By taking into account the party's internal divisions and continuous debates, this article challenges the view that Christian Democracy was united behind the integration project.

Alcide De Gasperi and Antonio Messineo: a Spiritual Idea of Politics and a Pragmatic Idea of Religion?
GIULIO VENNERI & PAOLO O. FERRARA

Examining and interconnecting two parallel lives, this article presents the abstract thoughts of a religious scholar vis-à-vis international political issues and the evolution of the attitude and sensibility of a political leader who found inspiration in his intimate religious convictions. The subjects of this study are Antonio Messineo, an international expert in politics and law and editor of the journal La Civiltà Cattolica, and Alcide De Gasperi, statesman and leader of the Italian Christian Democrat Party. The key features of their thought and actions are intimately interconnected and linked to the cultural and political context of their time. Specific attention is paid to the different approaches to European integration that Messineo and De Gasperi developed in the Christian cultural environment of post-Second World War Italy. The time-frame considered spans the period from the first years of the Italian economic, democratic and social reconstruction to the initiatives undertaken in the early 1950s for the institutional reorganisation of Western Europe. Though dealing in biographies, this paper is not a comparative biographical study, but aims to highlight the interdependence between culture and politics, theory and pragmatism.

Papal Thought on Europe and the European Union in the Twentieth Century
BLANDINE CHELINI-PONT

'Europe' has been treated in a number of different ways in papal thought in the twentieth century. At first, under Benedict XV and Pius XI, European unity was presented as the only means to avoid wars and to tame aggressive nationalisms. With Pius XII, Europe became a vision, founded on a sacred past where 'Faith' and 'Truth' had been given by Christ (and the Catholic Church) to the peoples of Europe. The pope's role was unceasingly to defend federalism, and to condemn communism and Cold War politics. The popes of the 1960s and 1970s recast Catholic doctrine on Europe as a new utopia, imbuing Europe with a new concern for the situation of Eastern Europe. They aimed to revive the opportunity for all European peoples to live in a secure, democratic and developed continent thanks to the protective cultivation of Christian values. John Paul II took the view that a common Christian identity pre-existed de facto and was outside any institutional union. Europe had always lived as a 'spiritual miracle'. The Christian heritage of Europe had to be heard, transmitted and respected both by individual European states and by the Union; otherwise the risk was that the unity project would fail and Europe would disappear, falling into decadence and permissiveness.

Towards a 'Common Law' on Religion in the European Union
NORMAN DOE

The development of the European Union (EU), in both composition and competence, has led to an expansion in the volume of its laws and other regulatory instruments dealing with

religion. So much so that scholars are increasingly today talking about 'EU law on religion' as a distinct legal category. This study proposes that a juridical approach provides a concrete insight into the posture of the EU towards religion. The study examines a wide range of legal sources, including treaties (among which the Lisbon Treaty is significant), directives, decisions and case-law as they touch directly or indirectly on religion. From all these sources it is evident that key religious phenomena are now formally known to EU law – religious associations, beliefs, rules, teaching, rites and authorities. It is suggested that underlying its legal instruments seem to be eight key principles at work in the approach of the EU to religion: the value of religion; cooperation with religion; religious freedom; religious autonomy; religious equality; special protection for religion; and the concept of religious privilege. In turn, however, the study asks whether these accurately represent the general principles of law on religion common to member states of the EU.

Voices in the Wilderness: the Established Church of England and the European Union
MARK HILL

The interrelation between church and state in the UK is informed to a considerable degree by the anomalous status of the Church of England as the established church for a major part (though not by any means all) of its territory. This paper examines the historical inheritance of establishment and evaluates the manner in which this informs the dynamic between the secular and spiritual authorities. It considers the place of religion within the European Union (EU) as viewed by its institutions and by individual faith communities. While there is discernible evidence of respect being afforded to the sacred within the organs of EU governance in terms of the recognition of Christian roots of Western Europe and dialogue with religious representatives, this is neither systematic nor universal. The Church of England in particular is yet to find its voice in the corridors of influence in Brussels, and it is ventured that the anachronism of establishment may be part of the reason for this.

Religious Lobbies in the European Union: from Dominant Church to Faith-Based Organisation?
MARTIN STEVEN

The political behaviour of national, state or dominant churches in Western Europe is being affected by European Union (EU) integration in two ways. First, supranational legislation – especially the harmonisation of fundamental citizen rights in policy areas such as education and employment – has led to the political privileges that these churches have traditionally enjoyed being challenged. While the Amsterdam Treaty protects the right of the individual citizen to freedom of religious expression, the EU is an inherently secular body with no mention of Christianity in any of its treaties or directives. Second, the transfer of power to Brussels has meant that the territorial political influence of national churches is no longer clear, in any case. These two factors combined give evidence to suggest that this changing policy environment is leading churches increasingly to adopt interest-group behaviour. Does 'ever closer union' inevitably mean a less certain – if not necessarily less influential – political role for Christian churches throughout Europe?

The European Union and the New Religious Movements
SABRINA PASTORELLI

The paper looks at how European institutions, namely the European Union (EU) and the Council of Europe, deal with new religious movements (NRMs). Drawing upon the jurisprudence of the European Court of Human Rights and the European Court of Justice,

the paper addresses the question of the place of new religions in the 'transparent dialogue' with the European Commission. In order to answer this question, fieldwork has been conducted to find out which NRMs are present in Brussels and are dialogue partners of the Bureau of European Policy Advisers (BEPA). The article points out what is at stake for a new religious movement in participating in the EU debates over the role of religion and its contribution to the construction of Europe. The preliminary findings allow us to claim that some movements frequently considered as 'cults' or 'sects' in the parliamentary reports of several member states (as well as in reports of specialised state agencies of 'cult' control) have been recognised as possible partners in discussions with the EU Commission. Even though the dialogue is supposed to be open and transparent, this paper raises the question of the qualities needed in a religious movement to be represented at the EU level. The paper shows how European institutions have participated in the debate on NRMs and raises questions over the possible influence of EU institutions, direct or indirect, on the policy of member states on religious matters. It also shows how governance in the relations between EU, civil society and religions could constitute a possible model for member states in dealing with the growing pluralistic landscape of the EU.

The Logic of Structured Dialogue between Religious Associations and the Institutions of the European Union
KENNETH HOUSTON

Aside from the controversy surrounding the proposed inclusion of an Invocatio Dei in the preamble to the European Union's (EU's) defunct Draft Constitution, a more muted controversy centred on the inclusion of a provision for structured dialogue between the institutions of the EU and communities of faith and conviction. This provision for dialogue, previously Article I.52.3 of the Draft Constitution, was retained in the Lisbon Treaty of 2007 as Article 17.3. The following article evaluates the logic for the inclusion of such a dialogue provision, focusing on the rationale of the European Commission body tasked with its coordination, as well as its potential role in intercultural understanding, the crystallisation of a European identity and core values, and the promotion of religious freedom and social justice. The putative imperatives examined are found to be insufficient to justify a differentiated dialogue provision.

Contents

Religion, Politics and Law in the European Union: an Introduction[1]

LUCIAN N. LEUSTEAN & JOHN T. S. MADELEY

On 11 June 2008, the eve of the Irish referendum on the Lisbon Treaty, Pope Benedict XVI publicly declared his support for a united Europe in front of a large crowd in Saint Peter's Square. He invoked the name of Saint Columbanus, an Irish saint of the sixth century who is held to have been important for converting wide swathes of the British Isles and Western Europe. The pope's comments did little to avert the constitutional crisis which followed Ireland's narrow rejection of the treaty however – which came despite the fact that the country's 1937 Constitution was declared 'In the name of the Most Holy Trinity, from Whom is all authority and to Whom, as our final end, all actions both of men and of States must be referred'.[2] This unusually direct, if unsuccessful, papal intervention serves as a reminder of how closely religion has on occasion been associated with the politics of European integration – as well as more widely in European politics – since the Second World War. It highlighted the concerns of some religious actors about the political evolution of the European Union (EU) and showed that religious and political leaders often have common agendas if sometimes divergent stances on those agendas. As will be seen below, a number of the most controversial issues associated with the ongoing project of European integration have indeed involved deep disagreement about the role of religion in politics and public life. In some ways this might seem surprising, since on most conventional measures Europe, especially in its western and central parts, can be seen as the most secular region of the world, one furthermore where secularisation continues to advance while elsewhere the contrary tendency, desecularisation – or the resurgence of religion – seems to be prevalent (Norris and Inglehart, 2004; Davie, 1994, 2000, 2002; Davie and Hervieu-Léger, 1996; Casanova, 1994, 2006; Berger, 1999; Berger et al., 2008).

The contributions to this volume do not concentrate on the normative issues which still counterpose religious and secular political trends and forces, however. While taking note of the debates about the appropriate role of religion in the public sphere in which, for example, Rawls, Rorty, Habermas and others (including the current pope) have vigorously engaged themselves, they address more empirical questions (Ratzinger, 1989, 2007). The principal focus is on examining the role of religion within the political evolution of the EU and its institutions and to identify the ways in which religious communities have related to the challenges of an expanded united Europe. What role have religious communities had in the construction of the EU? Is there a common European identity rooted in religion as claimed by some? In which ways have religious communities entered into dialogue with the European

institutions? To what extent and by what means can religious communities be seen to influence decision-making processes in the EU? In the political field, religion sometimes seems to transcend national barriers and have a direct impact on loyalties, legitimacy and networks of power. It is occasionally directly linked to social transformations and the establishment of new political entities. By analysing the ways in which religious actors respond to political affairs and political actors relate to their religious interlocutors at both national and supra-national levels, the volume addresses these issues in an interdisciplinary manner by bringing together perspectives from scholars working in the fields of political science, history, sociology and law.

Religion and European Institutions

In the aftermath of the Second World War which had wreaked such devastation on the European continent religious institutions and bodies were both directly and indirectly closely involved in the efforts of political, economic and cultural reconstruction. In the western part of the continent Christian Democratic parties became dominant players in the domestic politics of many countries and from the late 1940s formed a transnational network which was critical to the launch of the project of European integration (Irving, 1979; Buchanan and Conway, 1996; Gehler and Kaiser, 2004; Greschat and Loth, 1994; Hanley, 1994; Lücker and Hahn, 1987; Meyer, 1980; Durand, 1995; Malcolm, 1996; Papini, 1997; Lamberts, 1997; Pulzer, 2004; Van Hecke and Gerard, 2004; Kselman and Buttigieg, 2003; Kaiser 2007). The onset of the Cold War from 1948 cemented the growing division of the continent, in the eastern part of which Soviet domination led to the marginalisation of religious institutions, the suppression of some groups and the persecution of individual religious activists. In this context the partisan commitment of Christian Democrats to the building of institutions for cooperation and coordination in Western Europe is easily understood. For Casanova the strength of the linkage was such as to justify his claim that 'the initial project of a European Union was fundamentally a Christian Democratic project, sanctioned by the Vatican, at a time of a general religious revival in post-World War Two Europe, in the geopolitical context of the Cold War when "the free world" and "Christian civilization" had become synonymous' (Casanova, 2006, p. 66). This claim, he argues, is however little recognised by Europe's contemporary liberal elites – it remains a sort of hidden history as though it were something rather shameful – while for George Weigel and J. H. H. Weiler, the failure to acknowledge the historic debt can be traced directly to a 'Christophobic' mind-set which is all of a piece with the progressive marginalisation of religious influences in Europe's public life (Weigel, 2005). Wolfram Kaiser's study of the role of the Christian Democratic cross-national networks in launching the integration project has however done something to redress the balance (Kaiser, 2007).

The birth of the first European institutions took place in the midst of the ideological conflict between the two blocs. The Council of Europe, which began operation in August 1949, was intended to promote European unity by providing a common forum for debate and through the work of a series of commissions and the European Court of Human Rights. In 1950, however, a far more ambitious plan for promoting unity was launched with the promulgation of the Schuman Plan, which eventually led to the Treaties of Paris (1951) and Rome (1957), the foundation documents of the European Coal and Steel Community and the European Common Market respectively. Despite the Christian Democratic dominance of the political scene in the western part of the continent and the strong Catholic identity of most of the 'founding fathers', neither