

OSCE HDIM - Working session 4: Rule of law

UNIONE DEGLI ATEI E DEGLI AGNOSTICI RAZIONALISTI

Member of The European Humanist Federation – EHF

THE RULE OF LAW AND TRANSCENDENCE

Ladies and Gentlemen,

Since 2005 in my quality as representative to OSCE of the EHF of which my Italian association is a member, I have attended HDIMs, sHDIMs as well as most other events related to FoRB. Every year EHF has convened a side-event on subjects related to FoRB and to secularism, that is to the separation of church and state. Our major concern has been the assertiveness with which the Holy See and other authoritative representatives of the Catholic church belittle and condemn the basic principles of our democratic institutions. Lately, the rule of law as such has also become the target of demeaning and confounding remarks by Catholic church representatives. This is why the EHF has decided to intervene at this session which is devoted specifically to the rule of law.

The meaning churches give to a number of legal concepts concerning democracy and the rule of law refers to what churches call *natural law*, i.e the axiomatic values dictated by their holy texts and by the word of god. In Cardinal Bertone's words, these values are "non-negotiable" since they come from a transcendental source and "do not depend on the Church" but are based on human nature itself. This pronouncement, like all others which aim at introducing god's will in our democratic institutions, is asserted without any evidence or argumentation. This is perfectly legitimate in a Christian context but it carries no force in secular, democratic dialogue. As president Obama said, "words must be meaningful".

Moreover, cardinal Bertone's view is expressed in a language that is alien to politics and to our pluralist democracies and is extraneous to positive law as well as to the normative systems which refer to principles such as equality, justice, the people, the state. The law - a set of rules and norms that govern the life of a society – belongs to this world and ignores transcendence. Evidently, the Catholic Church thinks otherwise. According to Archbishop Tomasi, the Vatican representative at the U.N. Human Rights Council who spoke in Geneva on 15 September 2007, "The presence and influence of the world's great religions was often a way to go beyond the subjective limits of the positivist judicial order with objective moral norms that serve the common good of all humanity". No arguments are given to support this statement, nor are we told what the *subjective limits of the positivist judicial order* are or in what way the *moral norms that serve the common good of all humanity* are *objective*.

On Oct. 15, 2009 Archbishop Celestino Migliore, permanent observer of the Holy See at the

United Nations, delivered a statement on the rule of law before the 64th session of the U.N. General Assembly. He said: "... what is needed is to take into account that underlying any law is a fundamental value or truth which must be upheld in order for it to have any real meaning and purpose... Thus, to speak only of the rule of law without including the need for justice would be inadequate and risk replacing the rule of law with a rule by law".¹ What is the *fundamental value or truth that underlies any law* and why include the need for justice when the principle of justice is intrinsic in the rule of law?

The Archbishop here ignores the established meaning of 'rule of law' (as for example in Tom Bingley's admirable short book on the subject) to suggest it risks being reduced to mere obedience to any laws that any regime cares to impose. He transparently seeks to imply that it needs theological underpinning! Besides, the Holy See is a member of OSCE. Does it not agree with the definition of the rule of law given in the OSCE Human Dimension Commitments, Thematic Compilation, volume 1, article 2.4 which reads:

"The participating states are determined to support and advance those principles of justice which form the basis of the rule of law. They consider that the rule of law does not mean merely a formal legality which ensures regularity and consistency in the achievements and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression".

Is it not because the Vatican's idea of justice has a transcendental connotation and therefore differs from the conventional democratic definition? Besides, such abstract terms as *value, truth, justice* are placed alongside straightforward legal concepts and create a deliberate confusion between the legal sphere and the transcendental one. And, further on, Archbishop Migliore repeatedly mentions a *just rule of law* and declares²: "The Holy See['s]... educational institutions in many countries around the world provide individuals quality education in the fundamental nature of law and its proper application, which can only lead to the eradication of corruption". What is the *fundamental nature of law*? In the absence of a definition by archbishop Migliore, I suggest we refer to John Paul II's Encyclical *Evangelium*

¹ "We must remember that law alone is not the aim, as countries too often use laws as a source of oppression and violence so as to "rule by law." Rather, what is needed is to take into account that underlying any law is a fundamental value or truth which must be upheld in order for it to have any real meaning and purpose... Thus, to speak only of the rule of law without including the need for justice would be inadequate and risk replacing the rule of law with a rule by law".

² 2. The Holy See and its various organizations remain committed to supporting the rule of law at the national and international levels. Its educational institutions in many countries around the world provide individuals quality education in the fundamental nature of law and its proper application, which can only lead to the eradication of corruption".

³ (72) The doctrine on the necessary conformity of civil law with the moral law is in continuity with the whole tradition of the Church. This is clear once more from John XXIII's Encyclical: "Authority

is a postulate of the moral order and derives from God. Consequently, laws and decrees enacted in contravention of the moral order, and hence of the divine will, can have no binding force in conscience...; indeed, the passing of such laws undermines the very nature of authority and results in shameful abuse.. This is the clear teaching of Saint Thomas Aquinas, who writes that "human law is law inasmuch as it is in conformity with right reason and thus derives from the eternal law. But when a law is contrary to reason, it is called an unjust law; but in this case it ceases to be a law and becomes instead an act of violence". And again: "Every law made by man can be called a law insofar as it derives from the natural law. But if it is somehow opposed to the natural law, then it is not really a law but rather a corruption of the law".

(70)...But the value of democracy stands or falls with the values which it embodies and promotes. Of course, values such as the dignity of every human person, respect for inviolable and inalienable human rights, and the adoption of the "common good" as the end and criterion regulating political life are certainly fundamental and not to be ignored.

The basis of these values cannot be provisional and changeable "majority" opinions, but only the acknowledgment of an objective moral law which, as the "natural law" written in the human heart, is the obligatory point of reference for civil law itself. If, as a result of a tragic obscuring of the collective conscience, an attitude of scepticism were to succeed in bringing into question even the fundamental principles of the moral law, the democratic system itself would be shaken in its foundations, and would be reduced to a mere mechanism for regulating different and opposing interests on a purely empirical basis.....

(71) It is therefore urgently necessary, for the future of society and the development of a sound democracy, to rediscover those essential and innate human and moral values which flow from the very truth of the human being and express and safeguard the dignity of the person: values which no individual, no majority and no State can ever create, modify or destroy, but must only acknowledge, respect and promote".

⁴ *"In the OSCE region, we are largely blessed with a consensus on the importance of religious liberty. This is why it is important that we continue our conversation on the substance of religious liberty, on its fundamental connection with the idea of truth, and on the difference between religious freedom and relativism that merely tolerates religion while considering it with some degree of hostility. Again I quote from the 2011 Message for the World Day of Peace: "Religious freedom -- the Holy Father said -- should be understood, then, not merely as immunity from coercion, but even more fundamentally as an ability to order one's own choices in accordance with truth. [...] A freedom which is hostile or indifferent to God becomes self-negating and does not guarantee full respect for others. A will which believes itself radically incapable of seeking truth and goodness has no objective reasons or motives for acting save those imposed by its fleeting and contingent interests; it does not have an 'identity' to safeguard and build up through truly free and conscious decisions. As a result, it cannot demand respect from other 'wills', which are themselves detached from their own deepest being and thus capable of imposing other 'reasons' or, for that matter, no*

vitae for a reply³: "Authority is a postulate of the moral order and derives from God. Consequently, laws and decrees enacted in contravention of the moral order, and hence of the divine will, can have no binding force in conscience...; indeed, the passing of such laws undermines the very nature of authority and results in shameful abuse".

This being the concept of *law*, what then is the concept of *democracy* that emerges from official Vatican documents? Again a reply to this question is given in *Evangelium vitae*:

"It is therefore urgently necessary, for the future of society and the development of a sound democracy, to rediscover those essential and innate human and moral values which flow from the very truth of the human being and express and safeguard the dignity of the person: values which no individual, no majority and no State can ever create, modify or destroy, but must only acknowledge, respect and promote".

These quotations are a source of deep concern for humanists and for democratic citizens in general because, far from being mere spiritual pronouncements, they provide the background for forceful interventions of the Catholic church in the public and institutional spheres. According to pope Ratzinger, the TFEU, as amended by the Lisbon treaty, gives churches "institutional rights". Now, institutions may have rights *as institutions* – for example, to own property, be free from government interference – but they have no rights to dictate how a democratic society should govern itself. And there is no democracy without pluralism and freedom of conscience. These come into play imperatively when discussing laws respectful of human rights in matters such as sexual and reproductive life, euthanasia, scientific research, etc. which are at odds with the divine *moral order* as interpreted by the Vatican leaders. In fact, pope Benedict equates pluralism to what he calls *ethical relativism*. "Ethical relativism - which holds nothing as definitive - cannot be considered a condition for democracy, as if by itself it could guarantee tolerance and mutual respect among persons and allegiance to majority decisions. A healthy democracy promotes the dignity of every human person and respect for his or her inviolable and inalienable rights... Without an objective moral anchorage, not even democracy can ensure a stable peace (*Evangelium vitae*, 70). Again *moral norms*, *moral order* and a failing memory of the sad times for human rights which Europe suffered when the Catholic Church was in command.

Furthermore, such pronouncements which disqualify our democratic institutions are accompanied by continuous attempts by the Vatican to impose the Catholic moral doctrine by law and go as far as threatening punishments in this world or in the next to Catholic politicians who do not toe the Vatican line. Besides, in the name of subsidiarity - much praised by pope

'reason' at all. The illusion that moral relativism provides the key for peaceful coexistence is actually the origin of divisions and the denial of the dignity of human beings. Precisely this vision which identifies freedom with relativism or militant agnosticism, and which casts doubt on the possibility of ever knowing the truth, could be an underlying factor in the increased occurrence of those hate incidents and crimes which will be the object of our debate today".

Benedict - religious organisations insist on supplying basic public services while claiming huge opt outs from equality and human rights law. When a religious organisation becomes a state contractor, it actually becomes an arm of the state, thus blurring and erasing the distinction between private and public and especially between church and state. Is it this that the Catholic leaders seek?

My last quotation is drawn from the address of Archbishop Dominique Mamberti, secretary for Relations with States, to the OSCE high-level meeting on christianophobia held on 12 September in Rome. It concerns religious freedom, truth, relativism, a slanderous judgment on non believers and the usual warped idea of pluralism, expressed in the customary peremptory language of Vatican representatives⁴:... A freedom which is hostile or indifferent to God becomes self-negating and does not guarantee full respect for others.... The illusion that moral relativism provides the key for peaceful coexistence is actually the origin of divisions and the denial of the dignity of human beings. Precisely this vision which identifies freedom with relativism or militant agnosticism, and which casts doubt on the possibility of ever knowing the truth, could be an underlying factor in the increased occurrence of those hate incidents and crimes which will be the object of our debate today”.

In other words, no concept of religious freedom is valid unless it conforms to and promotes Roman Catholic doctrine. Anyone taking a more generous view of freedom of religion or belief is an unprincipled nihilist liable to promote hate and commit crime. It is only by wrapping up what it means in the obscurest jargon that the Catholic Church can get away with such naked subversion of democracy, human rights and the rule of law.

Although other churches, such as the Orthodox church, may share the same views as the Catholic church on the subject of democracy and of the rule of law, I have concentrated my attention on statements of authoritative Vatican representatives for two reasons. Being an Italian citizen and living in Rome I have a personal and (alas) daily experience of the invasiveness of the Catholic church in public life. Which does not mean I do not recognize the social and public dimension of freedom of religion. Religion and churches are most welcome in the public square – at a par with other religions and civil society associations - provided they are respectful of all citizens, but most unwelcome in the institutional sphere where private, non-elected bodies such as churches do not belong. The second reason for which I have referred exclusively to the Vatican regards the policy it pursues in European bodies, the EU in particular, despite it being the only European state that has not signed the European Convention on Human Rights; a policy which, as the above quotations confirm, contradicts the principles laid down in the basic EU and international instruments of which OSCE member states are signatories. The Vatican representatives do not seem to distinguish between legality and transcendence or between private and public and look down on the hard-won principles of democracy and of the rule of law we all adhere to, believers and non-believers alike. Besides, they are oblivious of the fact that 35 to 50% of Europeans do not care about religion and that even the majority who consider themselves Catholics do not follow church precepts especially in matters such as sexual and reproductive life. This notwithstanding, the Vatican leaders who ludicrously consider the Catholic church an “expert in humanity”, declare that the religious dimension embraces the whole range of human concerns and lends competence to the church in

almost all matters, seeking so to justify why Catholic church representatives intervene in practically all aspects of public and institutional life. Pope Benedict even attacked the UK government's equality legislation, claiming it threatened religious freedom and ran contrary to "*natural law*". I personally recall the order given to Catholics by cardinal Ruini, then head of the Italian Bishop's conference, to boycott the vote on assisted procreation so as to make the referendum fail for lack of a quorum; besides the frequent incitements to break the law on, for ex. the supply of contraceptives.

The intent of this paper is to raise awareness among governments and NGOs on the policy pursued by religious representatives who believe that their moral doctrine is the only source of morality and should therefore be enforced by law on a population that, increasingly, is using its freedom of religion or belief to abandon religion altogether.

Of course, we realize that whenever elements of the Catholic moral doctrine find their way into laws voted by parliament, thus eroding the tenets of democracy and of the rule of law, it is our elected politicians who are to be held to account. The deliberately confounding language used by the Vatican hierarchy is a good excuse for them to hide their heads in the sand.

Vera Pegna