

Divine pretensions and human law.

Work, the social marginality of religion and protection of freedom.

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This very night you will all fall away on account of me.

Matthew 26:31.

1. *The spirit of Antigone.* 2. *The unshakeable determination of Antigone.* 3. *Athens, Jerusalem... and Thebes.* 4. *The clothing imposed by religious denominations and devotees' aspiration to an area of freedom.* 5. *Dismissal in religious organisations.* 6. *The display of the Crucifix.* 7. *The social marginality of religion, the arguments of the soul and labour.*

1. *The spirit of Antigone.*

To discuss the link between law and religious beliefs, it is admissible to refer to the pagan (yet immortal in Western thought) figure of Antigone, who bears witness to the respect for the divine message (not incompatible with that of Christ's message, which included honouring deceased relatives). The assertive and extreme objection to Creon's prescriptions remain a warning, especially because the problem was not due to the limitation to freedom of conscience in the strict sense of the term: the prescriptions did not repudiate religious practice, but prohibited a burial incompatible with the laws of pagan gods, particularly similar to the latest issues heard by courts on the use of the veil. In Sophocles' tragedy, contrast is inherent to the concept of political power¹, claiming that opposing edicts could be linked to behaviour in conflict with expressed sacred norms, as highlighted by Antigone towards the start of the play², following Sophocles' method to clarify the ethical problem of its protagonists in the first few verses.

The spirit of Antigone emerges with the suggestions of her unwavering conviction when she underlines her own conscious and explicit dissent to the

¹ See: Sophocles, *Antigone*, v. 175 et seq. Many Greek passages were translated by my son.

² See: Sophocles, *Antigone*, v. 20 et seq.

unjust norm and invokes her own power to assess the spirit of every prescription and her consistency with a higher ethical horizon, paying the price of the inevitable sanctions by the city and its deliberative body³. Antigone cannot be happy about her fate, because it removes her from the natural and linear development of her existence⁴, but the chorus' comments seal the relationship between the divine message and her violation of positive law: 'this was an illustrious word by a wise man: evil seems good to man, if a God wants to lead the mind astray, and will be short-lived without misfortune'⁵.

As Antigone herself would admit without hesitation, ethics and interpretation and, thus, the reconstruction of the regulatory system are on two different levels, starting with objectives and rules, but are synthesised in the person, if this needs to be the conscious protagonist of her intellectual effort. The law must be considered with an objective respect for its meaning and its rational rearrangement, upon resolution of social conflicts; at the same time, the hermeneutics cannot stop merely at understanding. This would be unacceptable in terms of faith, if the former were not a prelude to the critical assessment of the moral consistency of norms and the agreement between the 'is' of the State system and the 'ought' to be inferred from religious teaching. This dialectic is sculpted by Sophocles with strong devotion to Antigone's drama, precisely because of her accurate understanding of orders and deliberate manifestation and will to violate it, with the related depiction of the conflict between two incompatible prescriptive systems.

³ See: Sophocles, *Antigone*, v. 450 et seq.: 'Zeus did not announce those laws to me. And Justice living with the gods below sent no such laws for men. I did not think anything which you proclaimed strong enough to let a mortal override the god and their unwritten and unchanging laws. They're not just for today or yesterday, but exist forever, and no one knows where they first appeared. So, I did not mean to let a fear of any human will lead to my punishment among the gods. I know all too well I'm going to die—how could I not?—it makes no difference what you decree. And if I have to die before my time, well, I count that a gain. When someone has to live the way I do, surrounded by so many evil things, how can she fail to find a benefit in death? And so for me meeting this fate won't bring any pain. But, if I'd allowed my own mother's dead son to just lie there, an unburied corpse, then I'd feel distress. What going on here does not hurt me at all. If you think what I'm doing now is stupid, perhaps I'm being charged with foolishness by someone who's a fool'.

⁴ See: Sophocles, *Antigone*, v. 891 et seq., with *Antigone's* final rhesis: 'Oh my tomb and bridal chamber—my eternal hollow dwelling place, where I go to join my people. Most of them have perished—Persephone has welcomed them among the dead. I'm the last one, dying here the most evil death by far, as I move down before the time allotted for my life is done'.

⁵ See: Sophocles, *Antigone*, v. 620 et seq.

That discrepancy between the study of law and its critical and ethical review leads to a torment in individual conscience, a drama inherent in human condition, following Antigone's model, which contrasts the desire for a serene existence with the inalienable decision to observe the God's precepts. The protagonist faces her fate owing to the unjust law, an example of virtue and guarding the sacredness of the conducts imposed by otherworldly logics. The regret over what could have happened and cannot be ascertained, over the State's brutal force, is the premise of the suicide of her fiancé Haemon, in a fit of extreme passion. This episode, perhaps the most moving in Sophocles' entire work, is reminiscent of Ophelia's suicide (which was presumed and uncertain), whose demise is narrated and intentionality is worth questioning. With the hope for a happy life gone (through her father), and the likely and calm submission of Antigone's determined nature in marriage to a lucid thinker like Haemon fails with every hesitation in the face of the extreme self-harming act⁶. However, invoking life, to be led according to a specific responsibility, is incumbent upon the heroine—the virgin Antigone—deprived of the Hymen.

Considering her role in Oedipus at Colonus and even in Oedipus Rex, in which, without a beat, she appears in a crucial moment, on her father's side, to crown the ultimate (and terrible) outcome of the story, one could ask of whom did Antigone remind Sophocles: his mother, daughter, mother, sister or perhaps a beloved slave; she has certainly always been played as enthralled by intense pain and able to overcome it in the name of ethics. Antigone falls prey to deep passions that she can control, and find the righteous path, albeit contrary to law. Due to this unfortunate and inflexible rationality, Antigone finds herself at first at the summit of any thought on the contrast between opposite deontological systems, one grounded on the State (and its social success, whatever its nature), the other

⁶ See: Sophocles, *Antigone*, v. 1129 et seq., containing the account of Haemon's suicide by the messenger: 'the boy just stared at him with savage eyes, spat in his face and, without saying a word, drew his two-edged sword. Creon moved away, so the boy's blow failed to strike his father. Angry at himself, the ill-fated lad right then and there leaned into his own sword, driving half the blade between his ribs. While still conscious he embraced the girl in his weak arms, and, as he breathed his last, he coughed up streams of blood on her fair cheek. Now he lies there, corpse on corpse, his marriage has been fulfilled in chambers of the dead. The unfortunate boy has shown all men how, of all the evils which afflict mankind, the most disastrous one is thoughtlessness'.

on a moral and religious dimension leading to full earthly failure⁷. The opposition between the reasons for civil cohabitation and faith and its implications is so clear, yet irreparable. Western political thought and its community (and earthly) dimension find in Antigone their first adversary, due to Sophocles' calling to follow and admire duty as an acceptance of the evidence sought by the gods. This aspect is recognised by the protagonist herself⁸, who not only abides by the obligation imposed by her religious profession, but knows that going along with the gods to the point of the ultimate sacrifice leads to martyrdom. This bodes a different spiritual horizon and moves the incident to extreme limits, and perhaps outside the overall picture of pagan religion.

2. *The unshakeable determination of Antigone.*

Antigone's prevailing feature is her unyielding determination, coupled with her regret over her fate, renouncing her love for Haemon due to her desire to observe divine precepts, and it is no coincidence to find comments such as 'Hegel assimilated her defect to Creon's; some more recent critics uncritically hold her up as a blameless heroine'⁹. On the contrary, in indirect support of Hegel, she adds: 'I want to suggest that Antigone, like Creon, has engaged in a ruthless simplification of the world of value, which effectively eliminates conflicting obligations. Like Creon, she can be blamed for refusal of vision. But there are important differences, as well, between her project and Creon's. When these are seen, it will also emerge that this criticism of Antigone is not incompatible with the judgement that she is morally superior to Creon'¹⁰. Albeit not acceptable for its

⁷ See: Sophocles, *Antigone*, verses 915 et seq.: 'In my wretchedness, why should I still look up to the gods? Which one can I invoke to bring me help, when for my reverence they charge me with impiety? Well, then, if this is something fine among the gods, I'll come to recognize that I've done wrong. But if these people here are being unjust may they endure no greater punishment than the injustices they're doing to me'.

⁸ See: Sophocles, *Antigone*, v. 891 et seq.: 'But I go nourishing the vital hope my father will be pleased to see me come, and you, too, my mother, will welcome me, as well as you, my own dear brother. When you died, with my own hands I washed you. I arranged your corpse and at the grave mound poured out libations. But now, Polyneices, this is my reward for covering your corpse. However, for wise people I was right to honour you'.

⁹ See: Nussbaum, *The fragility of goodness*, 151 et seq.

¹⁰ See: Nussbaum, *The fragility of goodness*, 151 et seq..

conclusions, the remark goes to the heart of the matter. Linked to the gods' imperative and eager to observe it to the point of making a conscious sacrifice, Antigone offers a 'simplified' version of her reasoning, as she replaces the precepts of her faith with those based on earthly rationality and political expression.

Creon's ideas are in a different horizon, that of intellectual application to the solution of collective habitation issues. This idea is refused by Antigone, and not only because it puts before her family's *philia* to paying heed to human laws, but it grounds that *philia* on the divine message¹¹. Indeed, as she rightly notes, precisely due to godly precepts, 'Duty to the family dead is the supreme law and the supreme passion. And Antigone structures her entire life and her vision of the world in accordance with this simple, self-contained system of duties. Even within this system, should a conflict ever arise, she is ready with a fixed priority ordering that will clearly dictate her choice'¹². Criticising this logic due to its unilateral nature means overlapping to Antigone's convictions the claim, necessarily as a priority over earthly rationality, deemed as a search for balance of values; yet, albeit diffuse and victorious in Western thought, this concession is as subjective as Antigone's. Political commitment has no moral precedence over religious intransigence.

Rightly considered an expression of 'theological determinism'¹³, Sophocles' thought agrees with that of Antigone, in the quest for an otherworldly basis of moral inspiration, and especially, with absolute determination, with acceptance of the holocaust and a renouncement of the wish for a peaceful life¹⁴. Far from being incomprehensible¹⁵, the definition of a duty hierarchy¹⁶ matches Antigone's wish to clarify the motivations behind their activity and it is called *autonomos*¹⁷ because it is consciously placed outside the laws of the city, i.e. the *nomos*, in the search for different ideals¹⁸. It may be granted that 'both Creon and Antigone are

¹¹ See: Sophocles, *Antigone*, v. 981 et seq., with express and direct reference to divine precepts.

¹² See: Nussbaum, *The fragility of goodness*, 153 et seq..

¹³ See: Perrotta, *Sofocle*, Messina – Firenze, 1935, 137 et seq. e *passim*.

¹⁴ See: Sophocles, *Antigone*, v. 891 et seq.

¹⁵ See: Nussbaum, *The fragility of goodness*, 186 et seq. 44.

¹⁶ See: Sophocles, *Antigone*, v. 891 et seq.

¹⁷ See: Sophocles, *Antigone*, v. 821 et seq.

¹⁸ See: Cassirer, *The Myth of the State*, 94 et seq., citing Sophocles, *Antigone*, v. 456 et seq.: 'They're not just for today or yesterday, but exist forever, and no one knows where they first appeared'. In

unidirectional and limited when they establish what is important. In each of their horizons we find important values not considered by the other'¹⁹.

This exact, albeit slightly predictable, consideration does not justify a negative appreciation of Antigone, unless a general obligation is imposed on an agreed rationality, in an earthly sense, as a comparison between interests and convictions. The religious perspective may be in itself unidirectional and limited, if it is grounded on a revealed message and linked to convictions deemed as absolute. Hegel's scant sympathy for Antigone²⁰ is not surprising, but, used to the idea of religious freedom and familiar with the indications of modern constitutional law, one of our contemporaries should shun the eternal temptation of Western thought, i.e. its claim to impose its rationalistic view upon dissenters, viewed as a necessary balance among social components. Antigone is not alone in her objection to common sense and Abraham expresses this perspective to a much greater extent, ready to sacrifice his son. It is immaterial that an animal was then slaughtered instead of Isaac, if his father was about to struck the blow. It is no accident, when contrasting Athens to Jerusalem and rationality to faith, that a great philosopher of religion often remembers the sacrifice of Isaac²¹, and only divine goodness saved him from holocaust.

The statement whereby State and family would be 'the purest powers of the tragic manifestation, since the harmony of these spheres and harmonious action within their reality amounts to the full reality of ethical existence'²² cannot be accepted. Antigone would reply (and, truthfully, she does, by sanctioning a hierarchy of norms)²³ that the idea is as unilateral as hers, seeing as there cannot be an ultimate binding rational justification from a vision of faith or the opposite view, i.e. the priority of the being itself in relation to the divine message, or from a social and earthly account of social dynamics, based on the breakdown of

contrast with Cassirer's comment in *The myth of the State*, 94 et seq., the fact that the laws are placed outside time does not deny their divine matrix, especially in a polytheistic system like that of Greece.

¹⁹ See: Nussbaum, *The fragility of goodness*, 157 et seq..

²⁰ See: Nussbaum, *The fragility of goodness*, 157 et seq..

²¹ See: Sestov, *Athens and Jerusalem*, 75 et seq.

²² See: Hegel, *Aesthetics*, 1836 – 1828, 1607 et seq.

²³ See: Sophocles, *Antigone*, v. 891 et seq.

interests and its synthesis among collective expectations. If Creon and Antigone express opposed and unilateral visions, as Abraham's behaviour, the heart of Sophocles' tragedy is not the predictable discovery of a religious dimension that can develop into irrationality (both on the earthly and political front), but the reflection on the opposition to city laws, which does not internally solve all the fractures in the least and is not the basis for a serene search for a relationship with a God. Sophocles' play does not question religion, accepted as an expression of deeply rooted values, but rather the human rationality towards which modern people seem so affectionate, to the point of wanting to impose it (yet again) upon Antigone, criticised on account of her incapacity to properly articulate her thoughts²⁴.

Western cultural tradition does not so much accept a different perspective from the majority of the social fabric as the specific approach and, at times, is simple in its implementation behaviour (but never in ethical premises) on which faith is substantiated, regardless of its nature and its guiding principles. This is the motivation of the perennial relevance of *Antigone*, above all on the legal front, not due to observance of godly precepts, but to thoughts on the State. It is no coincidence that Antigone's execution is accompanied by Haemon's suicide, a sign of Sophocles' full mistrust towards the force of the *nomos*, when he does not adhere to moral standards and contrasts with the deep convictions of the devout spirit. In the more limited and fortunately less dramatic context of modern labour in Europe, recent decisions show the gap between the claims of an inquiring rationality and the visions grounded on an otherworldly fate, with the ultimate dialectic between the solutions aimed at conflict resolution and those inspired by the comprehensive acceptance of a revelation.

Antigone expresses a unilateral determination opposed to mediation and is a victim of the *polis'* refusal to shelter it. The contrast is between political rationality and religion, that is, between two analytical methods of our dilemmas: Antigone was not asking Creon to modify her convictions on Eteocles and Polynices, but to recognise the freedom to follow the gods' teachings. First of all,

²⁴ See: Nussbaum, *The fragility of goodness*, 151 et seq..

the comparison between Creon and Antigone concerns the limit of public authority, as the latter's sacrifice shows the government's brutal imposition, with the related attack on the dissenters' safety. If, from its idealistic perspective, Hegel comments, not persuasively at all, that 'the true development of the action consists solely in the cancellation of conflicts as conflicts, in the reconciliation of the powers animating action which struggled to destroy one another in their mutual conflict'²⁵, Antigone would counter that she does not wish to reconcile with the impious Creon²⁶ and Sophocles would conclusively note together with the chorus in the second *stasimon* that man has conducted terrible endeavours, but none of them more than itself²⁷ (*deinon* being translated with an expression with the prevailing negative sense). The claim for dominion exerted by the *polis* leads to a feeling of fear mixed with surprise in the name of its human rationality until opponents are suppressed.

3. Athens, Jerusalem... and Thebes.

Among the various and great works researching into the cultural link between the experience in Athens and Jerusalem²⁸, unlike theses more favourable to a reconciliation²⁹, a significant study of philosophy of religion³⁰ recalls the incident of Isaac's sacrifice to signal the dialectic between a rationalistic conception of a Platonic and Aristotelian style and one based on faith, to the

²⁵ See: Hegel, *Aesthetics, cit.*, 1610 et seq.

²⁶ See: Sophocles, *Antigone*, v. 732 et seq.

²⁷ See: Sophocles, *Antigone*, v. X et seq.

²⁸ See: L. Strauss, *Jerusalem and Athens. Studies on Western political thought*, 70: in biblical thought, 'the completed thing, the complete knowledge of the completed thing, is knowledge of the good, the notion being that the desire for, striving for, knowledge is forbidden. Man is not created to be a theoretical or contemplative being: man is meant to live in childlike obedience. Needless to say, this notion was modified in various ways in the later tradition, but it seems to me that the fundamental thought was preserved, if we disregard some marginal developments'.

²⁹ See: Averincev, *Athens and Jerusalem. Opposition and meeting of two creative principles*, 24 et seq.: 'if in the Bible the spiritual condition is given as a principle of suffering or jubilation, good or evil which gives its all, like one of the most widespread ways of being in the human universe, within which we find authors and readers, that word being among the Greeks more unambiguous and rigorously located in the manifestly expressive and closed "individual"; is considered the topic for alienated philosophical or artistic analysis, or intellectual experimenting'.

³⁰ See: Sestov, *Athens and Jerusalem*, 75 et seq.

extent that it comes close to the end of his son, in the name of a plea for God³¹. As may be noted, where God has not arrived, Antigone comes in, whose purpose is served in the name of extreme (and criticised) compliance³² with religious convictions, so that, at least in its ultimate outcome, the experience of Thebes overcomes that of Jerusalem, even though the former relies on laws, not on a direct relationship with Divinity, as is the case with Abraham³³. On the contrary, when looking at Isaac's sacrifice as one of the qualifying matters of the biblical message³⁴, a similarity (both partial and indirect) ought to have been found with Antigone's lot, and the impossibility of a realistic comparison between Hebrew monotheism and Greek polytheism is unimportant³⁵.

The comparison between laws and faith implies the human path and it is worth asking whether the dialectic may be summarised or whether it is destined to sanction either prevailing position, unbreakable between each other³⁶. In the Catholic view, Pope Benedict XVI, in his challenging address delivered on 12 September 2006 at the University of Regensburg³⁷, at the opening of the Gospel of John stated, 'thus spoke the final word on the biblical concept of God, and in this word all the often toilsome and tortuous threads of biblical faith find their culmination and synthesis', since 'not to act in accordance with reason is contrary to God's nature', which underlines how 'we can see the profound harmony between what is Greek in the best sense of the word and the biblical understanding of faith in God'³⁸. It is not surprising that the delivery recalls the contribution of Athens and Jerusalem to the construction of Western thought and

³¹ See: L. Strauss, *Jerusalem and Athens. Studies on Western political thought*, 69 et seq.: 'the Bible, biblical thought, draws from the notion of a particular divine law; but asserts that this particular divine law is the one true divine law. Any other rules claiming divine origin are false. They are all human pretence'.

³² See: Hegel, *Aesthetics, cit.*, 1610 et seq.

³³ See: Genesis, 22:1.

³⁴ See: Sestov, *Athens and Jerusalem*, 103 et seq.

³⁵ See: Ciglia, *Between Athens and Jerusalem. The 'new thought' of Franz Rosenzweig*, Genova – Milano, 2009, 73 et seq.

³⁶ See: Sestov, *Athens and Jerusalem*, 103 et seq.

³⁷ Professor Lassandari stated in a recent report that, according to Professor Ghezzi, Western civilisation may be based on three historical cornerstones: Athens, Jerusalem and... Rome. Since he accepted me despite my anarchist ideas, he would have smiled at... the divergence to Thebes, towards a horizon very remote from that of Rome.

³⁸ See: Benedict XVI, *Address of 12 September 2006 at the University of Regensburg*.

the understanding of Christ's message, with a significant point from the Gospel of John.

Law serves a much more limited purpose because, rather than looking at the synthesis of cultural approaches, it must prevent Antigone's fate, if a liberal view of the relationship between regulations and religious, individual and collective experiences is accepted. Featuring so many forms of structural union and prolonged cooperation between the political system and the Church's organisation, Western thought has seen bitter confrontations, notably violations against minorities, with a phenomenon that is bound to grow, as shown by the plentiful case law, not only because denominations found in Europe are multiplied but also owing to migration; yet in terms of Christian, Catholic or reformed thought, it is a minority and requires a direct recognition of freedom. Above all, this happened in connection with the essential points on Christianity and their being an expression of a specific anthropological view based on human dignity and the inalienable value of God-given life. This does not affect hope in the least³⁹, because, as is written: 'Blessed are you when people insult you, persecute you and falsely say all kinds of evil against you because of me. Rejoice and be glad, because great is your reward in heaven'⁴⁰.

The general provisions of constitutions under European and European Union law are not important if they are not translated into experience and decisions, invoked to settle everyday conflicts. Labour generates a forced cohabitation in the same physical environment and the same relational community, with obvious implications of behaviour based on religious profession, as is often shown by court decisions. Case law confirms plenty of aspects of Creon's view, in a less violent manner, in the tendency to impose majority evaluations in opposition to minority attitudes dictated by faith. As for the prevailing social view, religion is marginal, especially by intransigent positions. If one wants to grasp a possible conflict between the *polis* and faith, Hegel's perspective unfortunately prevails⁴¹.

³⁹ *Caritas in veritate* encyclical, chapter 34.

⁴⁰ Matthew 5:11 et seq.

⁴¹ See: Hegel, *Aesthetics, cit.*, 1610 et seq.

Not only does Antigone's fate remain relevant in labour nowadays, whether due to its risk of failure (with less dramatic consequences, at least in Europe) or the accusation of irrational determination and unilateral choice of an individual position, defended to the bitter end. Nevertheless, the words of a great manifesto remain, which reminds us of the value of testimony: 'in making these accusations I am aware that I am making myself liable to Articles 30 and 31 of the Law of 29 July 1881 on the press, which make libel a punishable offence. I expose myself to that risk voluntarily. As for the people I am accusing, I do not know them, I have never seen them, and I bear them neither ill will nor hatred. To me they are mere entities, agents of harm to society. The action I am taking is no more than a radical measure to hasten the explosion of truth and justice'⁴². Antigone would have appreciated it. However, intransigent and extreme ones can be in faith (or in reactions to discrimination based on religion race, as in the case of Captain Dreyfus), as criticising rationalistic thought is inevitable for anyone expressing a different position, with a determination due to the conviction to observe a divine precept⁴³. The law must establish which freedom must be granted and how a different idea must be accepted, not so much in terms of conclusions, but of the method to express it⁴⁴.

4. The clothing imposed by religious denominations and devotees' aspiration to an area of freedom.

⁴² See: Emile Zola, *I accuse*.

⁴³ See: Sestov, *Athens and Jerusalem*, 103 et seq.

⁴⁴ See: Nussbaum, *The fragility of goodness*, 151 et seq..

Ms. Achbita's case is only apparently unimportant in comparison to the dramas of Antigone and Abraham⁴⁵. On the contrary, the principle of respect for the person is infringed by the idea whereby 'the prohibition on wearing an Islamic headscarf, which arises from an internal rule of a private undertaking prohibiting the visible wearing of any political, philosophical or religious sign in the workplace, does not constitute direct discrimination based on religion or belief'. It is of little consequence that, simultaneously⁴⁶, it is stated: 'the pursuit by an employer to take into account the wishes of a customer based on the fact the services of said employer are no longer ensured by an employee wearing an Islamic headscarf cannot be considered an essential decisive requirement to do her job'.

With various Italian solutions⁴⁷, the first decision affects the aspiration to freedom⁴⁸, as to ban the right to wear a symbol of one's own beliefs, in an unfounded way, it erects the employer's alleged power to create a professional context not influenced by religion⁴⁹; it is no coincidence, perhaps unwittingly due to the seriousness of the claims, that the following is stated, 'the desire to display, in relations with both public and private sector customers, a policy of political, philosophical or religious neutrality must be considered legitimate'⁵⁰, since 'the fact that workers are prohibited from visibly wearing signs of political, philosophical or religious beliefs is appropriate for the purpose of ensuring that a policy of neutrality is properly applied, provided that said policy is (...) pursued in a consistent and systematic manner'. Therefore, at least on the EU front, a 'blanket ban on the visible wearing of any political, philosophical or religious sign in the workplace who come into contact with the (...) customers' would be lawful.

⁴⁵ See: Judgment of the Court, Grand Chamber, 14 march 2017, in Case C – 157/15, *Samira Achbita e Centrum voor gelijkheid van sanse en voor racismebestrijding v. G4S secure solutions Nv.*

⁴⁶ See: Judgment of Court, Grand Chamber, 14 March 2017, in Case – 188/15, *Asma Bougnaoui and Association de défense des droits de l'homme v. Micropole Sa, f.k.a. Micropole univers Sa.*

⁴⁷ See Court of Appeal of Milan, 4 May 2016, in *Labour law topics*, 2016, containing a wise decision on the irrelevance of a young woman wearing the veil for the purposes of attractiveness.

⁴⁸ For a comparable precedent, see Court of Justice, 24 January 2006, no. 65500/10, *Kurtulmus v. Turkey*.

⁴⁹ For a comparable precedent, see Court of Justice, 15 February 2001, no. 42393/98, *Dahlab v. Switzerland*.

⁵⁰ See: Judgment of the Court, Grand Chamber, 14 march 2017, in Case C – 157/15, *Samira Achbita e Centrum voor gelijkheid van sanse en voor racismebestrijding v. G4S secure solutions Nv.*

Creon would be satisfied, as this means shifting the subordination of property and the contract to the creation of an organisation that can limit freedom in a fundamental aspect, so that strategy is pursued generally, as it was in the case of Creon's measure, which was at least based on one of his political beliefs (in the etymological sense of the term) and sought to uphold a public interest, rather than profit, at the expense of denying a person's values, and as such, unrelated to corporate power and not linked in any way to an affirmative obligation, exclusive to business. The notion of *cuius regio, eius etiam religio* (whose realm, his religion) is not dead if the employer can force employees to refrain from wearing religious symbols due to their wish to ban any connection with different denominations. There is no freedom of religion if these aspects are regulated by companies, which can discipline activities, not beings. The opposite conviction⁵¹ shows the illiberal temptations of the European Union.

In view of this principle, it is of no consequence that there is discrimination in 'an apparently neutral provision, (...) having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary'⁵². If that statement sought to contain the serious implications of general standards, it failed. The protection of freedom cannot hinge on the reaction of protected parties and the degree of compliance with the precepts of their faith, so that, depending on their courage and adherence to the indications of the respective denomination, the specific potential discriminatory effect should be verified. The employer cannot impose the neutrality of employees and force them to refrain from expressing their views through clothing. Liberty comes before any corporate power, unless employment is being confused with slavery.

⁵¹ See: Judgment of the Court, Grand Chamber, 14 march 2017, in Case C – 157/15, *Samira Achbita e Centrum voor gelijkheid van sanse en voor racismebestrijding v. G4S secure solutions Nv.*

⁵² See: Judgment of the Court, Grand Chamber, 14 march 2017, in Case C – 157/15, *Samira Achbita e Centrum voor gelijkheid van sanse en voor racismebestrijding v. G4S secure solutions Nv.*

Unfortunately, the legal principle is clear⁵³ in the irreparable infringement upon freedom, which every service provider in any civil nation must be in a position to practise at any company, when, as in the instant case, the visible sign of individual beliefs does not affect public policy and morality. The company cannot ban irrelevant religious practices perceived as essential by the people involved, based on individual choices that warrant priority protection. It is disgusting to place the economic purpose and protection of freedoms on the same front, while the decision rules that the former prevails over the latter⁵⁴. Religious ideas remain extraneous to the business contract and this conditioning of the exercise of freedom (outside ideological organisations) constitutes direct discrimination, in addition to a manifestation of brutal intolerance. The notion of ideological organisation is objective and it is logical to define it as subjective. Only understanding and respect for women practising Islam can be expressed in the face of a decision, which takes Europe back to a dark past that is best left behind, in the name of the exaggerated defence of economic interest, with the acceptance of discrimination against the weakest parties in need, on the one hand, and called upon by their conscience, on the other hand.

5. Dismissal in religious organisations.

The same view returns in a well-known precedent⁵⁵ where, if a Church or another organisation, the ethos of which is based on religion or belief, in support of an act or decision, rejects a candidate for a job that, due to the nature of the

⁵³ See: Judgment of the Court, Grand Chamber, 14 march 2017, in Case C – 157/15, *Samira Achbita e Centrum voor gelijkheid van sanse en voor racismebestrijding v. G4S secure solutions Nv.*

⁵⁴ See: Judgment of the Court, Grand Chamber, 14 march 2017, in Case C – 157/15, *Samira Achbita e Centrum voor gelijkheid van sanse en voor racismebestrijding v. G4S secure solutions Nv.*

⁵⁵ See: Judgment of Court, Grand Chamber, 17 April 2018, in Case – no. 414/16, *Engeberger v. Evangelisches Werk fuer Diakonie und Entwicklung eV.*

activity or context, religion is an essential requirement, this must be subject to judicial review and amounts to ‘a requirement that is necessary and objectively dictated (...) by the nature of the occupational activity concerned’, without ‘considerations which have no connection with that ethos or with the right of autonomy of the Church or organisation’, or rather in accordance with the principle of proportionality. The justification is much more ponderous in that it contains, and in fact excludes, religious freedom; so much so that it is referred to a balancing with individual rights, which cannot happen for the protection of an essential liberty.

As contained in the grounds, ‘if review of compliance with those criteria were, in the event of doubt as to that compliance, the task not of an independent authority such as a national court but of the Church or organisation (...) it would be deprived of effect’⁵⁶; is quite the opposite. An evaluation of the collective expression of a religious mission is repulsed for an objective ‘examination’, because that is impossible. For many denominations, starting with mine, certain behaviour subject to rights granted by the State is criminal, to begin with: the voluntary interruption of pregnancy. Nor can there be an ‘objective’ synthesis of that unbeatable structural divergence. The freedom of the group is not functional to the observance of a non-existent standard of proportionality to enforce the reasons of the faith and their organisational reflections, but in the exercise of the employer’s powers as regards questionable beliefs different from those prevailing in the State. If this is only applicable to a few jobs, defining the ethical mission⁵⁷, its observance escapes an objective dimension, as an exclusive expression of the specifically protected expression of religious perspective. There can be no ‘proportionality’ based on general EU law, as they belong to a legal logic. Freedom requires the manifestation of an idea often in contrast with the perspectives of the modern State, precisely due to the growing social marginality of religion.

⁵⁶ See: Judgment of Court, Grand Chamber, 17 April 2018, in Case – no. 414/16, *Engeberger v. Evangelisches Werk fuer Diakonie und Entwicklung eV.*

⁵⁷ See: Judgment of Court, Grand Chamber, 17 April 2018, in Case – no. 414/16, *Engeberger v. Evangelisches Werk fuer Diakonie und Entwicklung eV.*

The reflections of court positions are viewed in a nutshell, as it is stated that ‘a Church or other organisation the ethos of which is based on religion or belief and which manages a hospital in the form of a private limited company cannot decide to subject its employees performing managerial duties to a requirement to act in good faith and with loyalty that differs according to the faith or lack of faith of such employees and, if that is not the case, what criteria are to be used to determine whether, in each individual case, such a requirement is consistent with that provision’; or rather ‘a difference of treatment, as regards a requirement to act in good faith and with loyalty to that ethos, between employees in managerial positions according to the faith or lack of faith of those employees is consistent with that directive only if, bearing in mind the nature of the occupational activities concerned or the context in which they are carried out, the religion or belief constitutes an occupational requirement that is genuine, legitimate and justified (...) and is consistent with the principle of proportionality’⁵⁸. Given the alleged need of the union on objective (and thus not religious) grounds, the Catholic matrix structure was hopeless, in view of the dismissal of a physician in charge of a ward because he had remarried after a divorce, and it was inevitably, yet not acceptably, concluded that ‘the requirement at issue (...) concerns the respect to be given to a particular aspect of the ethos of the Catholic Church, namely the sacred and indissoluble nature of religious marriage’ (and this clarification already proves the misunderstanding of Catholic values, since, for us, there is only one marriage).

It adds that ‘Adherence to that notion (...) does not appear to be necessary for the promotion of (...) ethos, bearing in mind the occupational activities carried out (...), namely the provision of medical advice and care in a hospital setting and the management of the internal medicine department which he headed’⁵⁹. While searching for objectives and the principle of proportionality, the decision does not understand that, given its nature, the hospital of a Church does not function for priority economic objectives, but for the practical affirmation of spiritual values,

⁵⁸ See: Judgment of Court, Grand Chamber, 11 September 2018, in Case – no. 68/17.

⁵⁹ See: Judgment of Court, Grand Chamber, 11 September 2018, in Case – no. 68/17.

and thus freedom must respond not to organisation in the perspective of the State, but to the full ethical notion advocated by every group⁶⁰. Why should healthcare activities ever be entrusted to people who are not accepting of religious theories with public responsibilities⁶¹? Precisely due to the current minority status of faith (regardless of the denomination), related initiatives express (even against the consciousness and specific will of the protagonists) an identity concept of the group's social presence, viewed as a set of worshippers captivated by a divine message and the respective precepts. The conflict with the State is predictable, at least in many defining aspects; this results in bail, precisely due to the growing conflict among different systems of values.

This conflict is not relevant when it results in the refusal to deprive the service of ideal motivations. In labour, excluding organisations based on specific ideological and Church-funded beliefs, the expression of faith 'this is a fundamental right: because a healthy democratic society needs to tolerate and sustain pluralism and diversity' and recognises the value whereby 'it has made religion a central tenet of his or her life to be able to communicate that belief to others'⁶². However, the civil registrar commits an obvious breach when refusing to record acts inherent to civil partnerships, while dismissing her beliefs⁶³. There

⁶⁰ As for the illegality of a dismissal due to an ideological conflict on therapeutic methods, see Como Magistrate's Court, 26 May 1993, in *Italian Law*, 1993.

⁶¹ In Italian case law, see Court of Cassation 16 June 1994, no. 5,832, in *Italian Law*, 1994, whereby 'the dismissal by a religious educational establishment of a Catholic denomination of a lay physical education teacher because he had entered into a civil instead of a religious marriage, insofar as the subject does away with the ideological orientation of the teacher and is indifferent of the school's tendencies' would not be lawful. In the opposite sense, see Florence Court, 28 February 1992, *ibid.*, 1992. In the opposite vein, see Court of Cassation 21 November 1991, no. 12,530, *ibid.*, 1991, on the lawfulness of a 'the dismissal by a religious educational establishment of a Catholic denomination of a lay physical education teacher because he had entered into a civil instead of a religious marriage, grounded on the indissolubility of the link and its sacramental nature, given the irreparable conflict between that behaviour and the distinguishing principles and purpose of religious teaching and owing to the need to reject the discriminatory nature of the termination, inasmuch as said orientation is protected as a primary ethical value by the precepts of freedom of teaching, ensured to religious schools in general, and Catholic schools in particular, and also considered within the parents' freedom to choose an education inspired in the dictates of Christian doctrine'.

⁶² See: European Court of Human Rights, 15 January 2013, *Eweida v. United Kingdom*, no. 48420/10.

⁶³ See: European Court of Human Rights, 15 January 2013, *Ladele v. London Borough of Islington*.

is no right to conscientious objection, except in cases set forth by law⁶⁴. In a position to invoke the extent of those cases in point as speakers of the political system, the Churches cannot consider it a similar principle implied in their state of freedom⁶⁵.

6. *The display of the Crucifix.*

In the abstract, one might think that an extension of the hypotheses of conscientious objection would meet the essential requirements of many people, where, on the contrary, many activities would be excluded, starting by many healthcare practices, given the current regulations and those on the verge of being modified in Italy for end-of-life, with an obvious compatibility with traditional ethical beliefs. Specifically, when moving on to legal analysis, the claim to ground a contractual breach on conscientious objection is not compelling, like the hypothesis of refusing the registration of a civil act contrary to subjective moral evaluations. The freedom of religious profession does not amount to the freedom of complying according to one's own beliefs, but, if any, to that of refusing contractual stipulations to prevent conflict at the root.

The problem is to speculate about ideological organisations; it is not apparent why they must have managerial staff members who behave in the opposite way to the ideas of the group, but, likewise, it is not understood why an employer without similar characteristics should accept a breach based on subjective values. The state of freedom connected with religious profession is not an imposed choice, but an exclusion of intrusion by behaviour irrelevant to the corporate purpose. An insurance company can achieve maximum efficiency regardless of the clothing of its workers, the government must record all legal acts, a healthcare institution must abide by laws on euthanasia and only religious organisations can aspire to operate under their own matrix, as they do not impose

⁶⁴ See: Regional Administrative Court (TAR) – Lombardy (Brescia Section) no. I, 29 December 2016, no. 1791, Italian case law, 2016.

⁶⁵ See: Council of State, Section no. III, 2 September 2014, no. 4460, in *New Civil Commercial Law*, 2015, 75 et seq.

their views upon third parties, but invoke simple respect for the belief assumed and justified by the entire organisation.

Notwithstanding the favourable case law in Italy⁶⁶, truthfully dedicated to a certain balance⁶⁷, the claim of displaying the Crucifix in the workplace is not well-grounded, precisely because, at least on the collective front, the protection of freedom does not amount to grounds for the imposition of the symbols of a vision that is not only subjective but also marginal within the collective experience. The awareness of the worldwide crisis of religious profession can lead to a proper relationship with the State, and asking for freedom entails recognising and protecting that of others identically. Irrespective of the dubious theological substantiation of the thesis whereby the Crucifix could assume a non-religious value and, if any, express instances of civil cohabitation⁶⁸, related provisions are contrary to a liberal view, as they impose the presence of symbols beloved by believers, but indifferent, or even worse, unpopular among other people. Just as there can be no company committed to imposing its view and preventing religious clothing or objects from being worn, in parallel, not even the latter may be subject to an order, all the more so in the workplace, where the most varying ethical beliefs must be placed on an equal footing.

7. The social marginality of religion, the arguments of the soul and labour.

Much as they may dislike it, Churches as a whole must become accustomed to a condition of social marginality, as attested by case law and the very idea

⁶⁶ For instance, it is stated, 'the Crucifix is a symbol which can carry different meaning and serve different purposes; if in a place of worship it is a religious symbol, in the classroom it is a symbol fit to express the higher foundation of the civil values of tolerance, mutual respect, individual development, assertion of their rights, respect for their freedom, independence of moral conscience before authority, human solidarity, refusal of any discrimination, characterising the Italian civilisation and outline the secularity in the current political system. The decision by scholastic authorities, in accordance with regulations, to display the Crucifix in classrooms does not appear to be censurable in reference to the principle of secularity of the Italian state' (see Council of State, Section no. VI, 13 February 2006, no. 556).

⁶⁷ In a sense that is favourable to the presence of the Crucifix in schools, see European Court of Human Rights, 18 March 2011, no. 30814, Italian case law, 2011, 2661. In the opposite sense, see European Court of Human Rights, 3 November 2009, in *Foro it.*, 2010, II, 4, 57.

⁶⁸ See: Regional Administrative Court (RAC) – Veneto (Venice Section) no. III, 22 March 2005, no. 1110, Italian case law, 2005.

whereby a company could impose its claim of secularity, to the extent of banning the wearing of religious symbols⁶⁹. This makes the demand for freedom more urgent, as a recognition of the right to express one's beliefs, without falling into a justification of the contractual breach⁷⁰, outside cases of conscientious objection. Conversely, the imposition of behaviour or signs of a non-existent collective faith is outdated and must be set aside, as in the case of displaying the Crucifix in offices.

Social marginality provides protection from discrimination and makes believers one of the tolerated groups, in the convulsive evolution of Western civilisation, based on Creon's political rationality and bound to end in the same failures; indeed, the cases of discrimination based on religion are rare, at least in Italy, and a recent decision on Good Friday does not set an example⁷¹ in terms of its facts and unconvincing solution. In any country, not only European and Christian ones, the identification of holidays must be in keeping with a logic of compromise, so as not to hinder business objectives (completely neglected in the grounds) and facilitate worship for anyone who wants it and, at any rate, accommodating the wish to prioritise rest and family. No State can guarantee the holidays of all denominations⁷², owing to inevitable economic repercussions, and this would be an irrational decision, since an exaggerated protection of the wishes of employees would be translated into an unacceptable violation of economic initiatives, without any justification of social utility. Although fundamental, respect for individual beliefs does not amount to a multiplication of opportunities to rest, as it hinders profitable productive activities.

In terms of religion, EU law is said to have introduced a 'principle of equal treatment'⁷³, whereas that conclusion is not convincing, and this is confirmed by

⁶⁹ See: Judgment of Court, Grand Chamber, 14 March 2017, in Case – no. 157/15, *Samira Achbita and Centrum voor gelijkheid van sanse en voor racismebestrijding v. G4S secure solutions Nv.*

⁷⁰ See: Court of Justice, 3 December 1996, *Kontinnen v. Finland*.

⁷¹ See: Judgment of Court, Grand Chamber, 22 January 2019, in Case – no. 193/17, *Cresco investigation GmbH. v. Sig. Achatzl*.

⁷² See: Court of Justice, 9 April 1997, no. 29107/97, *Stedman v. United Kingdom*.

⁷³ See: Judgment of Court, Grand Chamber, 22 January 2019, in Case – no. 193/17, *Cresco investigation GmbH. v. Sig. Achatzl*. The judgment in question states: 'With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to' religious factors.

all national legal systems, which never include as holidays those of any denomination, but those consistent with the majority tradition, whether in Christian countries or those of other denominations. There can be no 'fundamental right' to 'equal treatment' in religious terms⁷⁴, as is inevitably regulated in our Constitution, and the only way to accomplish this (indeed a deplorable one) would not be ensuring Good Friday to those in Evangelical Churches of Augustinian and Swiss denominations, the Old Catholic Church and the Evangelical Methodist Church, but to eliminate all Christian holidays, starting with Holy Christmas. If it is not possible to rest on the holidays of all denominations (because we would never work), equal treatment may only be accomplished negatively. The protection of religious freedom has nothing to do with the protection of equality, as set forth by our Constitution.

On the contrary, precisely in terms of labour, Churches must lay claim not so much to the protection against discrimination (regulated and rarely applied), but to the recognition of the freedom to state individual credos, if it does not transcend the breach of obligations grounded on the pursuit of objective goals and not the subjective aspiration to secularism. Article 1 of Law no. 300 of 1970 here in Italy is exemplary, as it asserts the right to disclose one's own beliefs, without infringing upon corporate interests, thus without any claim of conscious objection, but with the necessary cohabitation of different ideas. Anyone motivated by faith can have no obligations or rights trespassing upon third parties' (people cannot refuse to cut pork if this has been undertaken at a butcher's, and a different subdivision of labour is not possible)⁷⁵; thus, all civil steps must be completed, if this profession has been chosen, but workers can be themselves, because moral inclinations are expressed by an individual, without any conditioning by their employer.

Especially, even though a cultural environment that did not favour the protection of freedoms was born in 1942, Article 2,087 of the Civil Code is

⁷⁴ See: Judgment of Court, Grand Chamber, 22 January 2019, in Case – no. 193/17, *Cresco investigation GmbH. v. Sig. Achatz*.

⁷⁵ See: Barbera, *Dismissal under discrimination protection law*, *Labour law review*, 2013, I, 139 et seq.

somehow prophetic as it refers to due protection of businesses not only in terms of physical integrity but also of the moral dimension of service providers. It is worth asking whether, in corporate times, although towards its well-deserved end, legislators historically realised that this expression implies a regard for the soul. If faith assumes a revelation that may not be confined to Western political rationality, as the stories of Antigone and Isaac show as respective paradigms, safeguarding a prospective ethic, set forth under 1942 under Article 2,087 of the Civil Code, calls for productive, public and private organisation, in accordance with an alternative future. Norms are crucial when religious thought must abandon any claim of expressing general ideas and is enclosed in its minority logic, which is very self-evident, at least in Italy, and is getting consistently worse, due to the likely regulation of euthanasia and progress of adoption by homosexuals.

In this dialectic between moral beliefs and professional and scientific practice in the task of interpreting positive provisions lies the sense of the study of law from a Christian perspective, and the ethical reflection on the impact of all norms as a whole is the consequence of the hermeneutic process, if it is not confined to a cold reasoning, but, from faith's perspective, warrants wondering about the consistency of precepts with the notion of man arising from Christ's message. At least restricted to the interpretation of laws that are increasingly contrary to their beliefs, Italian Catholic jurists can console themselves in the thought of Article 1 of Law no. 300 of 1970 and Article 2,087 of the Civil Code, which in the workplace creates a protected space for their sensitivities and imposes respect. The reasons behind faith cannot expect much more nowadays. Nor should they.