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Law and religion as a strategy in favor of profitable cultural osmosis: a wide look to civil law systems *

SUMMARY: 1. Together in diversity: law and religion in modern civil law systems - 2. The religious traditions in law and religion - 3. The religion and law osmosis in law-making processes - 4. The religion and law osmosis in jurisdiction - 5. As a strategy: the nomopoietic function of religions in the legal *koinè*.

1 - Together in diversity: law and religion in modern civil law systems

Currently, one of the approaches to the relationship between law and religion is based on the assumption that these are two discrete domains, which sometimes collide with each other.

Today this clash is empirically verifiable in different sectors of law (in workplaces, in cases of ostentation of religious symbols in public spaces, ecc.), because the religious factor influences many aspects of the society and of the human life¹. In fact, we must not forget that religion, directly or indirectly, is part in the people's life (for believers as well as non-believers who necessarily assimilate it, sometimes unwittingly), and for this reason it become an element that shapes all of their ethic, social, legal, economical and personal affairs².

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¹ **G. BARZILAI**, *Introduction*, in **AA. VV.**, *Law and Religion*, edited by G. Barzilai, Ashgate, Burlington, 2007, p. 11.

² Regarding the importance of role of the jurist in this context, see **A. FUCCILLO**, *Diritto Religioni Culture. La preparazione del giurista alle sfide della società contemporanea*, in *Calumet - Intercultural law and humanities review*, online review (www.calumet-review.it), 11 December 2017, pp. 1-11.



In that sense, is not wrong to say that the religious factor contributes to the construction of human identity and directs the daily life choices of many individuals³.

However, next to that, it is correct to argue that the religious factor plays a fundamental role also in the architecture of the law systems. Religions in fact, offers not only an eschatological vision of life, but contribute to shape, worldwide, the legal cultures⁴.

In a legal perspective, this influence is clear if we consider the endogenous religions in a given geographical context⁵, but the same relationship is equally verifiable also sociologically and anthropologically.

In modern civil law systems, the relationship between law and religion is complex and its existence is immediately identifiable in codifications, because in these systems, as it is known, law is normally collected in codes. And it is precisely in law codes that the influence of religious ideas on civil law systems is evident⁶.

That influence in fact is existent in the terminology of many civil code institutions (marriage and family, inheritance, donations, contracts)⁷, in which the legacy of religions appears clear.

Moreover, religions ask their faithful to follow behaviours characterized by shared social values which are often subject to state laws. The principle of solidarity is one of this. This principle has been “absorbed” by the state legislations and emerges in the regulation of the obligations of many civil law codes, such as the Italian and Spanish civil law codes, but also in the German and French⁸ ones.

In particular, we can see it in the duty of fairness and good faith in the pre-contractual phase:

- Artt. 1337⁹ and 1338 Italian Civil Code;

³ **A. FUCCILLO, F. SORVILLO, L. DECIMO**, *The courts and the code. Legal osmosis between religion and law in the cultural framework of civil law systems*, in *Stato, Chiese e pluralismo confessionale*, online review (www.statoechiese.it), n. 28/2017, pp. 1-13.

⁴ **È. DURKHEIM**, *The elementary forms of religious life*, Oxford University Press, Oxford, 2001.

⁵ **M.J. RAISCH**, *Religious Legal Systems in Comparative Law - A Guide to Introductory Research*, in www.nyulawglobal.org, April 2017.

⁶ **M. DE BLOIS**, *Religious law versus secular law. The example of the get refusal in Dutch, English and Israeli law*, in *Utrecht Law Review*, 6/2, 2010, pp. 93-114.

⁷ **M. RICCA**, *Divorzi diversi e geografia giuridica interculturale Il “termine” mobile del matrimonio*, *Calumet - Intercultural law and humanities review*, cit., 2017.

⁸ **G. RIPERT**, *La règle morale dans les obligations civiles*, LGDJ, Paris, 1949.

⁹ “While carrying out the negotiations and the formation of contract, the parties must



- Art. 1258¹⁰, Spanish C.C.;
- § 242¹¹ and 138¹² BGB (German C.C.);
- Artt. 1134¹³ and 1135¹⁴ French C.C.;

and in the execution of the contract:

- Art. 1375¹⁵ It. C.C.;

in its resolution for excessive onerousness:

- Art. 1467¹⁶ It. C.C.;
- Art. 388¹⁷ Gr. C.C.

behave according to good faith.”

¹⁰ “Contracts are perfected by mere consent and from that time they are binding, not only in respect to the fulfillment of what has been expressly stipulated, but also in all the consequences which, according to their nature, are in accordance with good faith, use, and law.”

¹¹ “Performance in good faith - An obligor has a duty to perform according to the requirements of good faith, taking customary practice into consideration.”

¹² “Legal transaction contrary to public policy; usury - (1) A legal transaction which is contrary to public policy is void. (2) In particular, a legal transaction is void by which a person, by exploiting the predicament, inexperience, lack of sound judgement or considerable weakness of will of another, causes himself or a third party, in exchange for an act of performance, to be promised or granted pecuniary advantages which are clearly disproportionate to the performance.”

¹³ “Agreements lawfully entered into take the place of the law for those who have made them. They may be revoked only by mutual consent, or for causes authorized by law. They must be performed in good faith.”

¹⁴ “Agreements are binding not only as to what is therein expressed, but also as to all the consequences which equity, usage or statute give to the obligation according to its nature.”

¹⁵ “The contract shall be performed in good faith”.

¹⁶ “In contracts with continuous or periodical execution or adjourned execution and in case that the obligation of one of the parties has become excessively onerous due to extraordinary and unpredictable events, the party who is obliged to such performance can demand the dissolution of the contract with the effects laid down in art. 1458. The dissolution cannot be demanded if the supervening onerosity is part of the normal risk of the contract. The party against which the dissolution is demanded can prevent this by offering to modify equitably the conditions of the contract.”

¹⁷ Provides that, if, for exceptional reasons that could not have been predicted, the obligations of one party in a contract become excessive in view of the counter obligations of the other party, taking into account the principle of good faith and relevant transactions practices (if any), then that party may ask the competent Court to readjust the excessive



and finally, in the prohibition of compound interests:

- Art. 1154¹⁸ Fr. C.C.
- § 248¹⁹ BGB;
- Art. 1283 It. C.C.;

Religions, therefore, “suggest” positive values that are absorbed by legal systems in a complex osmotic relationship.

2 - The religious traditions in law and religion

Religious traditions give rise to concrete cases, which demonstrate the ongoing relationships between law and religion in the cultures of people. Religions have always suggested institutions, rules, and remedies to positive law²⁰. It follows that religion is also capable of obstructing the elitist (major economic private powers) transformation of law, so that it regains the authentic meanings on which it was founded, thus contributing to the evolution of civil systems. It is impossible to ignore that one of the keys of these theories is to be found in religions and the principles they contribute to society.

It is essential to refer to religions in these matters, because:

- a) religions represent a fundamental matrix of sense²¹;

obligation or terminate the contract, if this is possible.

¹⁸ “A debtor of a debt which bears interest or produces arrears may not, without the consent of the creditor, appropriate the payment which he makes to the capital in preference to the arrears or interest: a payment made on capital and interest, but which is not in full, shall be appropriated first to interest.”

¹⁹ “Compound interest - (1) An agreement reached in advance that interest due should in turn bear interest is void. (2) Savings banks, credit institutions and owners of banking businesses may agree in advance that interest not collected on deposits should be held to be fresh interest-bearing deposits. Credit institutions entitled to issue interest-bearing bonds for the amount of the loans granted by them may, for such loans, have commitments made to them in advance to pay interest on interest in arrears.”

²⁰ **H.J. BERMAN**, *The interaction of law and religion*, Abingdon Press, Nashville, 1974; **I. BIANO**, *Rappresentazioni del ruolo delle religioni nella giustificazione e nella risoluzione dei conflitti locali e globali: una riflessione tra Jürgen Habermas e Ulrich Beck*, in *Lessico di etica pubblica*, 2, 2017, pp. 41-52.

²¹ **M. RICCA**, *Pantheon. Agenda della laicità interculturale*, Torri del Vento, Palermo, 2012.



b) religious teachings typically include ideas such as respect for creation (Christianity, Islam), harmony of nature (Eastern religions), and concepts of redistribution and mutual help²².

Denominational laws may form the backbone of the production of national and super-national legislation, as they suggest institutions and forms of protection. These laws orient the behaviors of the faithful pushing them towards legal conducts (in varying degrees) in compliance with the dictates of denominational laws. Indeed, the new frontier of these laws is the rediscovery of a role in influencing the faithful not only in their eschatological or properly theistic choices, but also as ethical indicators for civilized living. Given their cultural codes, religions also inspire behavioral morality, and offer the faithful a feeling of protection when they are unfailing in their daily rituals. It is also undeniable that between the institutes of civil law and the rules of denominational laws there is a continuous process of osmosis. Therefore, religions feed the operational and interpretive variables of many legal transactions with modern contributions. In fact, they contribute to the evolution of civil systems.

In that sense, we can talk about of an osmotic process between religion and law, and of a nomopoietic function of religions. In fact, religions, among others, are one of the players that suggest good practices, especially in their function of influencing the civil law systems.

The relationship between religion and law, therefore, is complex, but the influence of religious precepts on the different legal traditions is undeniable.

An osmotic relationship between religion and law also characterizes modern Western legal systems. Beliefs related to faith are essential to the values behind the principles and legal rules of contemporary society²³.

Religious rights suggest, however, a combination of values on which the legal system is partially based, including the principle of solidarity. Therefore, these help in eliminating the imbalance of the state system and social inequalities. Especially, this take place in the economic fields during the options exercise by the stakeholder. For the faithful, all religious precepts to which they relate are imbued with a binding value affecting the

²² **M. RICCA**, *The Ambivalent Roots of Charity and Their Consequences in a Secularized World: A Survey Across the Three Monotheistic Religions of the Abrahamic Strain*, in *Calumet - Intercultural law and humanities review*, cit., 2017.

²³ **S.A. LAKOFF**, *Christianity and Equality*, in **AA. VV.**, *Equality*, edited by J.R. Pennock and J.W. Chapman, Atherton Press, New York, 1967, pp. 115-133; **E. RACKMAN**, *Judaism and Equality*, in **AA. VV.**, *Equality*, edited by J.R. Pennock and J.W. Chapman, Atherton Press, New York, 1967, pp. 154-164.



actions of the subject in his legal options. The religious precepts take on legal-positive characteristics and in this way, they perform a real function in the production of legal experience. This kind of faithful's legal-economic choices conveys a high degree of sociality in legal action. This is because they give an idiomatic bent to the legal instruments, which otherwise would be destined to mainly serve the economic interests and the financial powers.

Actually, we affirm that religious principles are basic elements of the civil law systems. Otherwise, is impossible to understand the exact legal meaning of many civil law institutions.

3 - The religion and law osmosis in law-making processes

The osmotic process between religious and law produces some consequences.

The first one is the (possible) relevance of the religion in the law-making processes²⁴. In civil law systems, they are not based on the jurisprudence, but on the political processes of the representative democracies.

Within them, the relevance of the religious factor at both national and international and community level does not end with the protection of individual religious freedom alone, since it also includes an institutional dimension. In fact, religious organizations operate in the public sphere and exercise at these levels a strong lobbying activity, aimed at their recognition on the institutional level and to the affirmation of their role in the "construction" of legal systems²⁵.

This is why the lobbying takes place at a dual level: both at the political level and, as mentioned, of regulatory production.

Currently, for example, there are more than fifty permanent representation offices of religious and confessional organizations in

²⁴ **R. McCREA**, *Religious Contributions to Law and Policy Making in a Secular Political Order: The Approach of European Institutions*, in **AA. VV.**, *Representing Religion in the European Union: Does God Matter?*, edited by L. Leustean, Routledge, London, 2012, pp. 217-236; **ID.**, *The Recognition of Religion within the Constitutional and Political Order of the European Union*, in *LEQS*, 9, 2009; **ID.**, *Rights, recourse to the Courts and the relationship between Religion, Law and State in Europe and United States*, in *RSCAS*, 9, 2016.

²⁵ **P. ANNICCHINO**, *Tra diritto e politica: riflessioni su Advocacy e Lobbying religioso negli Stati Uniti d'America*, in **AA. VV.**, *Democrazia degli interessi e attività di lobbying*, edited by G. Macrì, Rubbettino, Soveria Mannelli, 2016, pp. 123-135.



Brussels and are officially accredited to carry out “pressure activities” the most widespread Churches in Europe²⁶.

The Catholic Church, for example, works through the Apostolic Nuncio to the European Union but also through the representation of the COMECE, i.e. The Commission of the Bishops’ Conferences of the European Community.

The Orthodox Churches in turn act through the *Bureau de l’Eglise orthodoxe aupres de l’Union européenne*, while the Buddhists that represent the “new religious movements” works through the Union Bouddisthe européenne.

Even at the “institutional” level, therefore, the impact of the religious factor on the processes of normative production appears clear.

For this reason, it is increasingly important to affirm also in this context the principle of “intercultural secularity” as a tool for the governance of differences.

The second consequence from the osmosis process between religion and law is the influence on the interpretation of the law.

The interpretation to which we refer can be of two types: the first is the basic one that is the actual normative interpretation. The second is the one that involve the optional profile in the choice of legal instruments, that is put in place by individuals in choosing the most suitable tools to satisfy their religious interests. In the first case, as previously stated, the interpretation of the norms inevitably suffers from the cultural-religious heritage of the interpreter. In the second, instead, religious interests constitute the main criteria for selecting the best legal instruments to be used.

4 - The religion and law osmosis in jurisdiction

The osmotic relationship between law and religions also influences the interpretative activity of civil courts. Religious values become a fundamental element of interpretation of legal norms. In so doing, jurisprudence contributes to the creation of a “living right” in which the symbiotic relationship between law and religion is even more evident.

For example, regarding the aforementioned concept of good faith and the principle of solidarity, the Supreme Italian Court affirmed that:

²⁶ The list of accredited representatives is available on the website: www.2europarl.eu.int.



“the duty of correctness (Article 1175 of the Civil Code) puts itself in the system as an internal limitation of any subjective, active or passive legal situation, contractually assigned, contributing to the duty (unavoidable) solidarity (Article 2 of the Constitution), which, when applied to contracts, determines its content or effects (Article 1374 of the Civil Code) and must, at the same time, guide its interpretation (Article 1366 of the Civil Code) and execution (Article 1375 of the Civil Code), in compliance with the well-known principle according to which each of the contracting parties is bound to safeguard the interests of the other, if this does not lead to an appreciable sacrifice of his own interest” (Sentence n. 3775/1994).

In Italy, Spain and Brazil also works especially ecclesiastical courts that have the jurisdiction upon canonic marriage. These courts apply canon law, but their judgments have power in the legal system of the state if passed. In this way an ecclesiastical jurisdiction operates with full power.

The influence of this religious jurisdiction in the Italian legal system has recently been confirmed by the Italian Supreme Court. On 13 April 2018, The Italian Supreme Court has ruled that the maintenance allowance in favor of wife, established by a previous civil sentence, does not survive in the event of annulment of the canonical marriage by a next sentence of the ecclesiastical court. The sentence of the ecclesiastical tribunal had been rendered enforceable in the Italian legal system with appropriate judicial proceeding. The recovery of positive religious values can occur through not only the pronouncements of civil courts but also the statements of arbitral and religious tribunals, especially for the protection and promotion of values of not endogenous religions. In modern systems, there is a tendency to appeal to ADRs, sometimes with religious origins, also for the protection of freedom rights such as religious freedom. This tool allows a greater adhesion of the pronounced to the rules of the religion of belonging. Religious affiliation urges the faithful to turn to his courts for their own needs and to accept binding their pronouncements.

The latter contribute to the production of the living law that would have direct religious inspiration in this by proposing the paradigm “religion as law”. More precisely, since religion is the main cultural component of society, the faithful seek to implement the principles of religious rules by choosing civil legal options that respect or enforce the principles of religious law. Such a need has encouraged the development of extrajudicial disputes. Many Civil Law systems are testing the possibility of turning to the arbitral tribunals. This happens in many areas (family law, commercial law, contract law). This is a proof that people prefer to resolve their private affairs by resorting directly to the religious arbitration courts. In some states



of the Common Law, many arbitration courts work in respect of both religious and civil rules²⁷.

There are many examples:

- MAT: Muslim Arbitration Tribunal (available in England under the Arbitration Act 1996). Matters of jurisdiction: Islamic divorce; family disputes; forced marriages; commercial and civil arbitration; heredity; Islamic will; disputes over the mosque.

- ISC: Islamic Sharia Council (available in England with the Arbitration Act 1996). Issues of competence: Islamic divorce; family disputes; forced marriages; heredity; Islamic will. Other “social” services: marriage counseling; drug detox trails; intergenerational conflicts.

In Germany, the application of Islamic law is limited by public order and occurs through the “optional civil law” (a very common example is marriage contracts). The jurisprudence of the German courts is characterized by continuous references to the *shari’ah*²⁸.

In France, Islamic rules produce legal effects only when they are not contrary to public order and the police state. The concept of public order has inspired French courts on repudiation.

In Italy, private civil and commercial mediation organizations have been introduced as well as assisted negotiation institutions (Legislative Decree 28/2010; D.L. 132/2014 converted from Law 162/2014). These arbitral tribunals have powers in some matters (inheritance law, family and commercial law). In some case in civil law systems, the civil courts apply directly religious law²⁹. There are many examples of application by courts of religious rules, especially of Muslim³⁰ and Jewish origin.

²⁷ G. DOUGLAS, N. DOE, R. SANDBERG, S. GILLIAT-RAY, A. KHAN, *Social Cohesion and Civil Law: Marriage, Divorce and Religious Courts*, Cardiff University, Cardiff, 2011.

²⁸ S. KERN, *Shari’a Law Grows with Impunity in Denmark and elsewhere in Europe* (available on www.thecuttingedge.com); M. ROHE, *Islamic Law in German Courts*, in *Hawwa*, 1, 2003, pp. 46-59; N. YASSARI, *Understanding and Use of Islamic Family Law Rules in German Courts: the example of Mahr*, in AA. VV., *Applying Shari’a in the West: Facts, Fears and the Future of Islamic Rules on Family Relations in The West*, edited by M.S. Berger, Leiden University Press, Leiden, 2013.

²⁹ L. DECIMO, *The relationship between religious law and modern legal systems: The case of religious jurisdictions*, in *Calumet - Intercultural law and humanities review*, cit., 2018.

³⁰ M. ROHE, *Reasons for the Application of Shari’a in the West*, in AA. VV., *Applying Shari’a in the West: Facts, Fears and the Future of Islamic Rules on Family Relations in The West*, edited by M.S. Berger, Leiden University Press, Leiden, 2013; S. RUTTEN, *Applying Shari’a to Family Law Issues in Netherlands*, in AA. VV., *Applying Shari’a in the West: Facts, Fears and the Future of Islamic Rules on Family Relations in The West*, edited by M.S. Berger, Leiden



In a divorce request, a woman requested that her husband be ordered by the court to cooperate in a procedure before a rabbinical court in order to procure a divorce in accordance with Jewish law. The Supreme Court tried to reduce the problem to a balancing of interests within the framework of the law on unlawful conduct (tort). The Dutch Hoge Raad Supreme Court, on January 22, 1982, referred the case to the Court of Appeal in The Hague, which ordered the man to cooperate under threat of a judicially imposed penalty (*dwangsom*). An expert in the field of Jewish law also remarked that the compliance of the man with the order of the court to procure and get under the threat of an imposed penalty would result in a forced get (get me'oesa'), which, according to Jewish law, is invalid. Therefore, the Beth Din would not cooperate.

A case of direct application of religious law in the jurisprudence of civil law systems is also offered by Tribunal of Milano on 05.10.1990. The case concerns Jewish husband and wife who contracted marriage in Israel and who ask for a divorce certificated before the Rabbinic Court of Rome, which grants them the laws of the State of Israel.

In common law systems there are some particular cases: *Uddin c. Choundry*. The English court, in a divorce case, based his pronouncement on a MAT opinion. This case demonstrates the existence of a true intersection between Islamic and English law.

The case *Molla Sali c. Greece*, pending before the Grand Chamber, is also relevant. On the death of her husband, Mrs. Molla Sali inherited his entire estate under the terms of a will drawn up by her late husband before a notary. The deceased's two sisters contested the will, on the grounds that their brother had belonged to the Thrace Muslim community and that all matters relating to his estate were therefore subject to Islamic law and to the jurisdiction of the mufti rather than to the provisions of the Greek Civil Code. The Greek Court of Cassation decided that questions of inheritance within the Muslim minority should be dealt with by the mufti in accordance with the rules of Islamic law. It therefore remitted the case to a different bench of the Court of Appeal for fresh consideration. On 15 December 2015 the Court of Appeal ruled that the law applicable to the deceased's estate was Islamic religious law and that the public will in question did not produce any legal effects. Mrs. Molla Sali lodged application with the

University Press, Leiden, 2013. **F. SONA**, *Giustizia religiosa e islām. Il caso degli Sharī'ah Councils nel Regno Unito*, in *Stato, Chiese e pluralismo confessionale*, cit., n. 34/2016; **R. WILLIAMS**, *Civil and religious law in England: A religious perspective*, in **AA. VV.**, *Islam in English law: Rights, responsibilities and the role of Sharia*, edited by R. Griffith-Jones, Cambridge University Press, Cambridge, 2013.



European Court of Human Rights on 5 March 2014. On 6 June 2017 the Chamber to which the case had been allocated relinquished jurisdiction in favor of the Grand Chamber. On 15 January 2018, the Greek Law n. 4511/2018 is granting Greek Moslems the right to opt-out, and resort to domestic civil law. At the same time, the new law respects the right to opt-in for the application of Sharia law, upon the condition of mutual agreement between the parties. Inheritance matters are also regulated by the new legislation: In principle, they are subjected to Greek law, unless the testator solemnly states before a notary public his wish to submit succession matters to Sharia law. A parallel application of Greek and Sharia law is not permitted.

The fundamental principles of civil laws sometimes prevent the application of religious rules or the recognition of judgments of religious courts. The Court of Justice of the European Union, in case *Sahyouni v. Mamisch*, regarding the recognition of divorce pronounced by religious sharia court in Latakia (Syria), has established that the divorce resulting from a unilateral declaration made by one of the spouses before a religious court does not come within the substantive scope of art. 1 of Council Regulation (EU) No 1259/2010 of 20 December 2010.

In another case, Judgment of Divorce ruled by an Italian court (Tribunal of Padova) accepts the request from the spouses of the c.d. immediate divorce (not admissible in the Italian legal system). The request was accepted on the basis of the provisions of the aforementioned Council Regulation (EU) and from the Moudawwana (Moroccan Law on Family Law) inspired by Malikita but modeled (in order to ensure greater protection of women than traditional legislation).

However, there are cases where there has been a distorted use of the reference to religious law. For example, in January 2007, the judge of Tribunal of Frankfurt refused a Moroccan woman a fast-track divorce on the grounds that domestic violence was acceptable according to the Qur'an has been removed from the case following a nationwide outcry. The judge, Christa Datz-Winter, said the German woman of Moroccan descent would not be granted a divorce because she and her husband came from a "Moroccan cultural environment in which it is not uncommon for a man to exert a right of corporal punishment over his wife," according to a statement she wrote that was issued by a Frankfurt court. "That's what the claimant had to reckon with when she married the defendant." Mrs. Datz-Winter invoked the Qur'an to support her argument. In the court, she read from verse 34 of Sura four of the Qur'an, An-Nisa (Women), in which men are told to hit their wives as a final stage in dealing with disobedience. The



verse reads: “[...] as to those on whose part you fear desertion, admonish them and leave them alone in the sleeping places and beat them”.

The direct referral to religious law must not exceed the limit of public order placed by legal systems.

5 - As a strategy: the nomopoietic function of religions in the legal *koiné*

What has been said for civil law systems can perhaps also be extended to common law systems. Extension is also possible for other legal systems (Hindu and Muslim systems). Attention to these profiles has also emerged in China.

The world is globalized and a new legal *koiné* is emerging³¹. This is a system that arises from economic practice based on negotiating tools today at the service of the great private economic powers. It is a uniform legal language (mercantilistic) that escapes the political control of the legal systems.

The cultural-religious dimension becomes (in this context) a fundamental barrier to this practice, because political barriers can be overcome, but not religious ones that are inherently transnational. Religions suggest values that help to eliminate the imbalance of legal systems and social inequalities³². They can therefore become a brake on the “elitist transformation of law”. We are witnessing the formation of a democracy that the sociologist Zygmunt Bauman has called “liquid democracy”: a “liquid” society, without schemes or stable references, inevitably launched towards social exclusion and homologation³³.

Precisely where the political grip of the law is minor, religious traditions become cultural imperatives that construct and dimension these new practices, thus fulfilling a real nomopoietic function.

The nomopoietic function of religions creates legal rules capable of dealing with differences without undoing them is the main way to govern successfully in today’s multicultural society. Therefore, the thematic area religion/law constitutes one of the most effective and strategic places from which to address the complex problems of the coexistence of differences-

³¹ A. FUCCILLO, *Legal-economic Koinè and the Religious Nomopoiesis*, in *Calumet - Intercultural law and humanities review*, cit., 26 aprile 2018, pp. 1-21.

³² S. OFFUTTS, L. PROBASCIO, B. VAIDYANATHAN, *Religion, Poverty, and Development*, in *Journal for the Scientific Study of Religion*, 55/2, 2016.

³³ Z. BAUMAN, *Liquid life*, Polity, Cambridge, 2005.



hence the role of religious affiliation and its contribution to the harmonization of the system. Religious values, in fact, help to implement a potential equal use of legal instruments and therefore of real equal opportunities, and consequently an effective judicial secular system. As already repeatedly emphasized, it is necessary to ensure to the same opportunities for everyone, starting with daily needs, that is from living life. The positive impact that takes place through such an operation since it is connected to an easier access to the benefits of economic prosperity would inevitably result in an improved quality of life for people³⁴.

In that way, the intervention of religions in these sectors can be a barrier against neoliberalism as highlighted by Noam Chomsky, which affirms that principle based neoliberalism “is undermining mechanisms of social solidarity and mutual support and popular engagement in determining policy”³⁵.

³⁴ **A. FUCCILLO, F. SORVILLO**, *Religious freedom and objectives for intercultural economic development*, in *Stato, Chiese e pluralismo confessionale*, cit., March 2013, pp. 1-19; **A. FUCCILLO**, *The denial of religious freedom: a new approach to the system*, in *Stato, Chiese e pluralismo confessionale*, cit., n. 20/2014, pp. 1-16.

³⁵ **N. CHOMSKY**, *Requiem for the American Dream: The 10 Principles of Concentration of Wealth & Power*, Seven Stories Press, New York, 2017, p. 80.