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The Rest and the West

The Legacy of Constantine's Rules concerning the *Dies Dominica*: Anthropological Notes*

Abstract: Europe today is supposed to be a multicultural society in which diversities can coexist within a multicultural public sphere. But the realization of this objective requires new forms of legal equality and traditions of justice which are the main keys of understanding the demands of recognition that rise from the various communities in Europe. Different religious laws prescribe different days to accomplish religious duties and activities, and the Western calendar is still influenced by the legacy of Costantine's religious policy. The approaches and goals of this paper are twofold. On one side considering the norms by which Constantine started the process of "Christianization" of the time of Western society; on other side evaluating to what extent the rules enacted in the Late Antiquity may still be considered as sources of inspiration for the "policies of time" in the contemporary public sphere. At any rate, both approaches aim to improve the effectiveness of religious liberty in a multicultural society.

Keywords: Constantine I the Great, religious freedom in a multicultural society, time devoted to religious practice, Sunday, secularization.

1. Introduction

Present day Europe is supposed to be a multi-religious society in which diversities can coexist within a multicultural public sphere. But in daily legal practice the extent of the secularism of the European tradition is under discussion, often in connection with the nature and the essence of European cultural identity. Certainly, in this debate the lesson of history takes on new meanings and values, in relation to the contemporary situation and the needs and claims of citizens and immigrants and it is for this reason we are interested in analyzing the legacy of Constantine's ruling.

The so called Edict of Milan can be considered as a pillar of European culture and a matrix of the legislation which was promulgated by the states' representatives of the European Union concerning the fundamental rights of liberties of men. The Edict was issued in a period of global change, similar to today with the gradual transformation from a Christian continent to a multicultural Europe. People of different ethnics origins and cultural habits live actually in an international context in which rights, duties, labors, economical resources are posited within a common legal and political background.

* Note: this article was originally presented as the second part of a conference paper entitled «The Time reserved for Religious Practice as a Mainstay of the Religious Freedom. Constantine's Statutes on Sunday Rest and its Legacy in Contemporary Multicultural Society» (with Prof. Dr. Ulrico Agnati) at the 2013 International Symposium "The Edict of Milan and the Religious Liberty. The Impact of this Liberty over the Centuries, October, 10-11 2013, Centre for Religious and Juridical-Canonical Study and Research of the Three Monotheistic Religions: Mosaic, Christian and Islamic, Ovidius University of Constanta, Romania.

Basically, article 9 of the European Convention of Human Rights, dealing with varieties of models of thought, conscience and religion, states that

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

The aforementioned provision must be supported by a legal conception of pluralism which recognizes and embraces the public dimension to religion, and tries to accommodate the cooperation with all religions in public life. Currently, *in practice*, we might doubt the effectiveness of this address in respect to religions of more recent settlement in Europe, like Islam, Hinduism or Taoism, whose faithful live in a political community in which many social and legal processes are still molded by Western cultural patterns. Among many others, we surely find insert the coordinates of conceptualizing time and space in the public sphere.

Thus, it is more correct to remark that the actuality of religious freedom in a multicultural and changeable context requires new forms of legal equality and the tradition of different religions remains the main key of knowledge for the demands of recognition that arise from the various cultural communities in Europe. This is also the case of the time reserved to worship and the weekly day of resting.

More precisely, our aim is to evaluate to what extent the rules enacted in late antiquity maybe still considered a matrix of the way organizing time within the contemporary European public sphere. Further, we may ask whether present day regulation can be considered "secular" (culturally neutral) or rather, in spite of the formal legal framework and its theoretical declarations, is it religiously marked? In a multicultural context, habits which appear totally natural and neutral, probably aren't so. The question is whether this is the case for the time reserved for worship or resting days.

We aim to discuss that topic, not only from a historical point of view but from an anthropological perspective linking some connections between religion (that is the core of all our arguments), collective memories and practices with the European framework of religious freedom in our days.

As far as the "time" for worship, different religious laws prescribe different practices and even different days in which to accomplish religious duties and activities, and these elements influence the way of organizing a calendar, which expresses the rhythm of collective activities, with the function of assuring synchronicity. Despite the presumption of secularization of European society, the western calendar appears still strongly affected by the legacy of Constantine's religious policy, by which working and resting time were synchronized "generalizing" the rhythm of the *dies dominica* (the pagan *dies solis* and early-Christian Sunday), deleting the previous forms of calendars, marginalizing every alternative system of arrangements between time and labor.

The idea of a weekly day of rest is taken for granted by modern man. It appears to him so natural that he is hardly aware of the fact that it was largely founded on essentially religious, rather than rational, conceptions; that it took hundreds of years of severe, sometimes abstruse practices to put it into effect even with the Jewish community, in which it originated; and that

this legacy of Judaism in Christianity was adopted by the major part of world humanity only in the wake of modern social legislation¹.

In accordance with S.D. Goitein, we will explain and underscore those assumptions, using a simple scheme taken from the book of Julien Ries, concerning a comparative and historical approach to hermeneutics of religions². In order to explain the historical role of the religious experience in the interpretation, Ries distinguishes “the significance of religious experiences to contemporaries” from the “significance of the same matter for the man of the present day”. Both arguments are going to be briefly developed and they will be joined together in the final conclusions.

2. The Significance of Sunday Rest for the Contemporaries

The Sunday Feast became central in Christian cult from the early years of the Christian history, as proven by some passages from the New Testament, as *1Cor XVI 2*, *Act XX 7*, *Rev I 10*.

Sunday is considered the weekly Easter, the weekly celebration of Christ’s resurrection. Sunday is “the queen and the most important of the days” according to Pseudo-Ignatius³. Justin the Martyr, writing in the middle of the II century AD to the Roman Emperor to explain the Christian faith, gives us information about this weekly meeting:

We meet all together in an assembly on the day of the Sun, because this is the first day in which God created the world (...); furthermore, on this very day, Jesus Christ our Saviour, was risen from the dead: they had crucified him the day before the day of Saturn, and the day after the day of Saturn, which is the day of the Sun, he appeared to his apostles and to his disciples⁴.

Surely in the first years of the fourth century AD, the Sunday gathering was considered by the Christians of Abitina, a town not far from Carthage, more relevant than the life itself. Proconsul Anulinus captured some Christians of that region – it should be noted – on Sunday in 304. The Christians, tortured and destined to be put to death if not abjuring their faith, told Anulinus that they can’t live without the Eucharistic meal, without worshipping in this way the Sunday.

According to our sources, within the borders of the Roman Empire only the Christians felt this overwhelming need to worship on Sunday. On the contrary, at Constantine’s time resting on Sunday was irrelevant to other cults but fundamental to Christians.

From an anthropological perspective, the fact of creating a separation between the “time of God” from the “time of Man” (as well as of separating the “space of God” from the “space of Man”, by the creation of sacred buildings or areas) is a common way to give religious significance and values to human experience. By contrast, the way in which this distinction is realized may be very different and relative from one culture to another. For instance, we are aware of the similarity between the Jewish habit of the Shabbat and the Sunday rest of Christians, and we have also observed that the historical turn generated by Constantine’s conversion modified relentlessly the previous institutional situation,

¹ Goitein 1959, 183.

² Ries 2009, 3 ff.

³ Greek Patristic 5.769.

⁴ Justin the Martyr, *First Apology*, LXVII 8.

marking the significance of time in the West and in the other parts of the world governed by the Romans.

By means of Constantine's rules the meaning and the value of the rest on Sunday extended from the private living sphere of Christian communities to the public sphere. In the following years this recognition was completed on the ground of the calendar of feasts. It was a very particular manner in which religion molded social regulation, particularly modifying – by means of public rules – the rhythms of the social life of a wider society.

In this respect, we consider the legacy Constantine's turn in this field as a form of inverted "secularization". Normally, by this word we refer to a complex concept which describes the ever changing relationship between the value of a religion and its meaning in the society, within a political context.

More precisely, we may distinguish some technical meanings of this word:

- in the Italian ecclesiastical law, we mean the removal of political power from ecclesiastical control (in Italian history, we distinguish secularization in the removal of some huge real estates from the control of the Church, in the XIX century);
- in general terms, it signifies the diminishing status of religion in society;
- in Max Weber's terms, secularization deals with the fading importance of religious symbols and categories for the explanation of reality;
- finally, we may also indicate the process by which we translate some religious categories into the modern categories of thinking within the scientific or political domain.

In the increasing process of recognition by the Roman empire of the religious significance in that time, we observe a particular in which religion shapes the rules and the organization of a wider society. In the developing of the statutes on Sunday rest described in the first part, we may point out the way in which the habit of resting in sacred days (*dies fasti*) moves from the cultural sphere of Romans to the cultural sphere of Christians, by the overlapping of the habit of rest on sacred days. On the other hand, we have observed to what extent the cultural habit of Christians modified the Roman and the world calendar by the implication that worship has to be celebrated by all Christians together at the same time. Constantine's rule was the starting point of a longer process, whose legacy is today present in the way of fixing the workweek and the consideration of a mandatory rest from the daily labor of six days.

So, being aware of the history of Sunday rest, we may add another meaning: we may define the concept of secularization as an influence of religion into social life, its practices and collective memories. This is the meaning of the term "secularization", which we have to take into account in planning the future "politics of time" for a multicultural society. But first, we must ask whether this kind of supposed significance can be grounded also on the anthropological perspective of the relation between time, worship, labor and rest.

3. The Significance of the Religious Rest in a Comparative Perspective

As noted, the creation of a separation between the "time of God" from the "time of Man" is the most common way to give religious significance and value to human experience (as well as of separating the "space of God" from the "space of Man", creating sacred buildings or areas), but at the same time we

know that the way in which it happens may be very different and relative from one culture to another.

For instance, the same manner does not occur in the Islamic habit of Friday: according to some research about the origins of the Islamic Friday, in that day there is no need to a rest, like the former religions.

To demonstrate, let's begin with names. In every cultural approach, language steps first: the concept of naming the week in the Arabic language is quite different from the Latin: Arabs count the days, referring to them with numeral adjectives: الأحد (*al-ahad*) for the first (Sunday), يوم الاثنين (*ium at-thanin*) for the second (Monday), يوم الثلاثاء (*ium at-thalitha'*) for the third (Tuesday) and so on. We find two exceptions in this system: the Saturday is called السبت (*as-sabt*) and the Friday is called يوم الجمعة (*ium al-jum'ah*) from the Arabic root *j-m-'a* (to gather), which can be translated "the day of the congregation"⁵, because in that very day Muslims are obliged to attend to the longer prayers in the main mosque in their area. But, as well explained by S.D. Goitein⁶, the origins of the specialty of the Friday are not connected to rest, like in the sacred time's conception of Romans, Christians or Jews, but to the market day, the day in which it is possible to gather the nomadic people into the main town.

Neither in Hinduism is sacred time connected to a particular day of the week nor any resting obligation is linked to the activity of worship⁷.

On the contrary, in the cyclic Hindu conception of time (*kalam*) the moment of worship is, under many respects, a unique event. The ritual performance is considered an occasion by which a transformation is produced in reality. Many rituals are

events which cannot be said to undergo change, they clearly do change the social statuses or spiritual conditions of those on whom their transformative power is brought to bear⁸

For example, in Vedic ritual, *mantras* (prayers) are verses sung or recited in the course of a sacrifice. Within the whole rite, the utterance of a *mantra* usually inaugurates the particular action with which it is associated. Its role is to name and thereby focus attention on some element of the rite, sometimes the action itself, or the material used, or the deity the recipient of the sacrifice⁹. A single prayer is one unit: one *mantra* corresponds to one ritual act, which itself constitutes a single unit, and every "difference of *mantra* marks a difference of act"¹⁰. For instance, the role of the mantra recitation is something with which *you do something*¹¹.

As a consequence, temple worship has been always considered as a daily routine, which helps men to maintain cosmic stability and must be performed every day without fail. The calendar is affected by the extraordinary power of the rituals, referring to days or years: in some parts of the country, the astral week is divided into seven solar days called *vārs*¹², but the computation of the week is

⁵ Penrice 1971, 29. I am grateful to Dr. M. Fakhr-Rohani for this translation's proposal.

⁶ Goitein 1959, 183.

⁷ Good 2000, 273 ff.

⁸ Good 2000, 280.

⁹ Clooney 1987, 671.

¹⁰ Flood 2006, 303. See also, *Sahkhayana Srauta Sutra* 1.2.24.

¹¹ Staal 1979, 1 ff.; Carpenter 1992, 57-77; Dusenbery 1992, 385 ff.

¹² Each *vār* is thought to be governed by a specific heavenly body: *Ravivar* (Sunday) by Ravi (the sun), *Somavar* (Monday) by Soma (the moon), *Mangalvar* (Tuesday) by Mangal (Mars), etc. This is the pure Vedic calendar and it is followed by Nepal

fundamentally connected to the astral measures¹³. On the other side, almanacs are published annually which assign rituals and festivals to the appropriate solar day: in those cases the interruption of the ordinary life is due to take part in the pilgrimage or the festival and is connected to the special accessibility of the power at special times¹⁴.

For another example of “institutional religion” which diffused the effects of the harmonization of the religious time with the societal one, by means of the political power we may recall the case of the Chinese religion, in which Emperors imposed their order through the diffusion of the calendar, inauguration ceremonies, the classification of various cults and deities of the country. Neither in this tradition religious time needs a stop from working and from ordinary social activities. On the contrary, the temporal and spatial expanse of the festival cycle provides the community and its groups to celebrate its own existence with varied opportunities. The festive events of the lunar calendar year are occasions “for intense collective activity”, and these events alternate with more diffuse expressions of religiosity by individuals or households. As the lunar year unfolds, events which involve virtually all members of the Chinese community alternate with those which only gather sub-cultural or neighborhood groupings at temple fair sites and reunion banquets¹⁵.

At the end of the day, different religious cultures mark communities with a different conception of time. We must be clear under this respect, underlining on one side that although the reservation of time for worship’s needs is an anthropological feature of religions, the practical effects of this connection may be very relative; on the other side observing that, although in other religious traditions the respect for resting’s demand is present, it is differently conceived, with no connections with a weekly organization of social time¹⁶. This kind of synchronicity can be considered as a Jewish-Christian trait and one of the legacies, among others, of Constantine’s project to put the Christian religion under the normative umbrella of Roman law, and a consequence (though not immediate) of the following establishment of Christianity as a state religion. What at present is conceived as a *naturalia populi* practice, may not be such a natural thing.

4. The Legacy of “Sunday Rest” Rule in the Multicultural Europe

An effective religious freedom entails not only the respect of individual conscience, which is an internal aspect of the religious experience intrinsically linked with the religious convictions, but also needs the empowerment of the worship, notably the totality of ritual and ceremonial acts considered

today and co-incidentally Israel (for a similar but different reason I shall explain). India followed the British rule and the Christian influence, making Monday the first day.

¹³ Kennedy, Engle, Wamstad 1965, 275.

¹⁴ Stanley 1977, 28.

¹⁵ DeBernardi 1992, 253 ff. and 261.

¹⁶ For instance, in China, the workweek begins on Monday and ends on Friday. China began the two-day Saturday-Sunday weekend in 1995. Most government employees work 5 days a week (including officials and industrial management). Most manufacturing facilities operate on Saturdays as well. However, most shops, museums, and cinemas are open on Saturday and Sunday. Commercial establishments, including consumer banking and consumer telecommunication branches, are generally open throughout the weekend and on most public holidays.

as the external and direct expression of every religious belief; but practice needs time to accomplish the religious duties and activities. By contrast, the availability of time for individuals and groups may depend on their working conditions as well as from the societal organization as a whole¹⁷.

That is the reason why in present day Europe, the separation between free time and work time has become a claim for recognition by individuals and religious associations, and a matter of legislation or negotiation in the field of the multicultural labor law.

Although in Europe the issue is recent, the legal discussion about the Sunday rest has precedents in US in the Supreme Courts' case law. We can remember, for example, the case *McGowan v. Maryland*, 366 U.S. 420 (1961)¹⁸, in which appellants, employees of a large department store on a highway in Anne Arundel County, Md., were convicted and fined in a Maryland State Court for selling on Sunday a loose-leaf binder, a can of floor wax, a stapler, staples and a toy, in violation of Md. Ann. Code, Art. 27, § 521, which generally prohibits the sale on Sunday of all merchandise except the retail sale of tobacco products, confectioneries, milk, bread, fruit, gasoline, oils, greases, drugs, medicines, newspapers and periodicals.

In that case the Court focused some principles which can be recalled as following:

- a) Since appellants allege only economic injury to themselves, and do not allege any infringement of their own religious freedoms, they have no standing to raise the question whether the statute prohibits the free exercise of religion, contrary to the First Amendment¹⁹.
- b) Since appellants have suffered direct economic injury, allegedly due to the imposition on them of the tenets of the Christian religion, they have standing to complain that the statute is a law respecting an establishment of religion²⁰.
- c) In the light of the evolution of our Sunday Closing Laws through the centuries, and of their more or less recent emphasis upon secular considerations, it is concluded that, as presently written and administered, most of them, at least, are of a secular, rather than of a religious, character, and that presently they bear no relationship to establishment of religion, as those words are used in the Constitution of the United States²¹.
- d) The present purpose and effect of most of our Sunday Closing Laws is to provide a uniform day of rest for all citizens, and the fact that this day is Sunday, a day of particular significance for the dominant Christian sects, does not bar the State from achieving its secular goals²².
- e) After engaging in the close scrutiny demanded of it when First Amendment liberties are at issue, this Court accepts the determination of the State Supreme Court that the present purpose and effect of the statute here involved is not to aid religion, but to set aside a day of rest and recreation²³.

¹⁷ At the same time, article 31 of the Charter of Fundamental Rights of the European Union describes the fair and just working conditions as follows: 1. Every worker has the right to working conditions which respect his or her health, safety and dignity. 2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

¹⁸ <https://supreme.justia.com/cases/federal/us/366/420/case.html>.

¹⁹ P. 366 U. S. 429-430.

²⁰ P. 366 U. S. 430-431.

²¹ P. 366 U. S. 431-444.

²² P. 366 U. S. 444-445.

²³ P. 366 U. S. 445-449.

By contrast, in Europe, the common regulation is very general and in need of revision²⁴: the European Directive 2003/88/EC on working time lays down general goals for the member States to achieve on the matter, but also provides ways by which the existent degree of protection can be lowered by statutory and contractual provisions. A non-regression clause is provided for, which prevents collective agreements bringing down the existent degree of protection.

Notwithstanding the situation in order to realize a multicultural freedom “needing time for practice” is quite different country by country, and in some way contrasted.

For example, in the United Kingdom (Sunday Trade Act 1994), although the general rule is the prohibition of trading on Sunday, the law provides a detailed regulation of exemptions (guaranteeing the right not to be dismissed for refusing Sunday work). For instance, the prohibition does not apply in relation to shops occupied by persons of the Jewish religion. They can give to the local authority for the area in which the shop is situated a notice signed stating

(a) that he is a person of the Jewish religion, and

(b) that he intends to keep the shop closed for the serving of customers on the Jewish Shabbat²⁵.

In Germany, the establishment of Sunday as Germany’s weekly day of worship is enshrined in an appendix to the Basic Law under the heading, “Extracts From the German Constitution of Aug. 11, 1919 (Weimar Constitution)”. More exactly, under the subhead “Religion and Religious Societies,” Article 139 reads:

Sunday and holidays recognized by the state shall remain protected by law as days of rest from work and of spiritual improvement.

Though, under that same section, Article 137 (1) states

There shall be no state church

the effect of the Sunday protection is to institutionalize the Christian tradition of synchronized free for all; that is not a only theoretical matter. In fact, on December 1, 2009 this principle was confirmed by a decision of the German Constitutional Court in a case concerning the city of Berlin’s regulation, which formerly allowed stores to open 10 Sundays a year. The Court has upheld a complaint made by the country’s Catholic and Protestant churches, based the clause in the German constitution that Sunday should be a day of rest and spiritual elevation, and decided in favor of the churches, saying that Sunday opening should not take place four weeks in a row²⁶.

Similarly, on June 14 2012, Austria’s Constitutional Court has confirmed (decision G 66/11-8) that the prohibition on shop opening on Sundays and bank holidays is consistent with the Austrian constitution affirming that the overall objectives of shop closing or opening hours may be the

²⁴ In April 2009 and in March 2010 attempts of revision of the former directive, in order to achieve more flexible forms of work organization, multiple contracts, opt out arrangements and new ways of work/life balance in view of the new demographic reality, failed. Anyway, when was discussed the “*question of whether the weekly rest should normally be taken on a Sunday rather than on another day of the week,*” the Commission has played the subsidiarity card: on one hand pointing to the complexity of the question, on the other admitting that the effect on health and safety and work-life balance, as well as issues of a social, religious and educational nature, would need to be taken into account. However, the Commission argued that this does not necessarily make it an appropriate matter for legislation at EU level.

²⁵ See, schedule 2, Part II of the same Act.

²⁶ <http://www.spiegel.de/international/germany/the-world-from-berlin-even-atheists-need-to-switch-off-on-sundays-a-664754.html>, December 02, 2009.

protection of the interests of consumers, the aims of the competition regime and the socio-political function. All of these objectives would be in the public interest, said the Court.

In the same vein, the “secular” France enforced by law public Sunday rest in recent months. More exactly, in May 2013 courts ruled that the Louis Vuitton flagship store must remain closed on Sundays in accordance with former legal provisions, fixing a ban which was extended to other stores, provoking strong protests by French laborers who want to work on Sundays. The government is still divided on Sunday trading: supporters of the ban affirm that “maintaining Sunday as a mandatory day off has little to do with religion. It is more about preserving a certain idea of France, involving long lunches *en famille* and a day free from consumerism, and about unions’ determination to keep work in its (limited) place”²⁷.

In Italy, the situation is more flexible and still in progress. The provisions on working time which were recently enacted try to balance both business and workers’ freedom. Decree Law no. 138/2011 (and Law n. 148/2011) allows company and territory-wide collective agreements to derogate from legal protection, provided that social European standards are ensured. The same Decree Law also provided for a normative instrument by which “public” holiday dates are attached to weekends and shifted to the weekend or deferred to the day before or after; however, its consequences are likely to be soft, since nearly all religious and the most important public holidays²⁸ are not within the scope of the new regulations. In 2010, Law no. 183 also imposed milder economic penalties against employers who prevented their employees from enjoying daily and weekly rests and annual leave; Law no. 183/2011 restored individual freedom to insert flexible and elastic terms in part time employment contracts; and the last Decree Law of 2011 allowed shops to be open during Sundays and other bank holiday days. In contrast, a set of collective agreements, at any level, confirms that social partners along with business owners pay more and more attention to cultural, familiar and social interests of workers as persons²⁹.

Further, in Brussels is now based the “European Sunday Alliance”, a network of dozens of religious and nonreligious organizations from 27 European nations. The purpose, according to its website, is to “raise awareness of the unique value of synchronized free time for our European societies”, obviously choosing the Sunday as the day to enforce the rest for all.

5. Conclusions

As a conclusion, it is time to recall the scheme of interpreting the religious experience we have mentioned. As noticed, according to Julien Ries it is possible to distinguish the significance of religious experiences to contemporaries from the significance of the same matters for men of the present day. Respect to the Sunday rule, we cannot ignore that the value of the rest is today different from the past, being nowadays less connected to the worship³⁰, but more related to the rights of

²⁷ <http://www.economist.com/news/business/21587257-french-row-over-day-rest-closed-business>.

²⁸ Exactly, 25th of April, 1st of May and 2nd of June.

²⁹ Occhino 2012, 169 ff.

³⁰ Norris, Inglehart 2012, 83 ff.

employees. By contrast, the connection with the past appears still strong with respect to the political will of synchronizing the free time of a society, in order to strengthen and unify a community. To us this address, though politically suitable, is far from being culturally neutral or, in other words “secular”. Coordinates of time and space must not be considered indifferent to the legal meaning of human rights, on the contrary they represent the basic elements of every cultural categorization. Being aware of this feature of the organization of society is more than opportune for a religious freedom in context. In a multicultural public sphere the task of unifying time, which is so recurrent in historical experience, has to be tempered with the necessity to accomplish a pluralistic freedom of religion. Comparing different cultural groups, narratives and traditions of religion still represents the main key to understand the demands of recognition of human liberties coming from the legal domain. Freedom is not only formal equality but also a matter of fact and practices: connected to the state it is not a merely negative obligation of no interfering, but a positive task to make life according to some of the social precepts of religion possible. The state is entrusted to mediate and accommodate such a practice, and in so doing it must take into account that particular value that time reserved to worship may assume, according to the anthropological path we tried to explore in this research.

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(published online 6 March 2015)