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Legal-economic *Koinè* and the Religious *Nomopoiesis*

Abstract

In the economic field, the law is often perceived solely for the service function it provides (or should provide) to the benefit of market players. The economy thus drives the creation of negotiating instruments at the service of the great private economic powers. As a result, the weaker "parties" accept negotiating constraints which, although apparently voluntarily assumed in their conclusions and effects, actually limit their freedom by creating a functional and economic dependency.

Is there a way to break this link and intervene in defense of values such as equality and solidarity which should be integral to contemporary societies?

Among the various possibilities for positive conduct, religions are placed in the front row, above all for their nomopoietic function. Religious values and rights contribute to making the processes of "law systems self-analysis" more just, by curbing the interpretations of the law that benefit the economically dominant social classes.

Keywords: Religion – Economy – Solidarity – Sustainable development – Law

Summary: 1. Religions and *nomopoiesis*: between law and economics. – 2. Legal solidarity between law and religion. – 3. Religious solidarity in the economic relations among private individuals. – 4. Religious rights as allies of secular legal systems in overcoming inequalities. – 5. Religion and economic development. – 6. Redistribution and sustainable development: another mission for denominational rights.

1. Religions and *Nomopoiesis*: between Law and Economics

In the economic field, the law is often perceived solely in its ancillary function, i.e., for the service it provides (or should provide) to the benefit of market players. It is therefore the instrument used to define and manage contractual relationships that are too often characterized by an imbalance of the parties. The economy has fostered a new legal *koinè*¹, based on a well-established custom of businesses suggesting (as practice) negotiating tools at the service of major economic private powers, which too often are not subject to the rule of law and the essential democratic control that comes with it.²

¹ In the Italian encyclopedia Treccani, *koinè* is defined as "common language, linguistic usage accepted and followed by a

² Commercial practice and the web law have provided for the development of new formulas and contractual schemes needed for the conclusion of agreements on which many types of commercial sales and supply services are based.

The ductility of legal institutions based on the will (first and foremost the contract) shifted their natural function of looking for balance in the convention, pushing them towards a marked imbalance where the commitment to the relationship actually becomes an act of economic subjugation. When the weaker party accepts the terms of the negotiation, it appears voluntary, and yet it actually limits the freedom of said party by creating a functional and economic dependency. The contractual relation, then, creates a bond in which the consumer is essentially subjected to the terms of the producer. Is there a way to intervene in defense of the values which should be integral to contemporary society, also in accordance with the personalist imperative of the major constitutional charters?

It is extremely difficult to prevent the producers of goods from creating consumer needs as they strive to build their markets. On the other hand, without such efforts, the economic system would implode. The collapse of the system would result in the reduction of work opportunities and the fall of earnings with unimaginable consequences. For this reason, productive wealth has typically been understood as the principal merit in industrialized societies. Modern legal systems are, therefore, too often built in defense of the upper social classes, and contemporary law is designed for those who hold economic power.

We must therefore push for economic development that is linked to values, pushing consumers toward mature choices that direct producers toward more socially conscious profiles. Religions are among the first agents to suggest good practices, especially in their role as producers of laws.

The relationship between religion and law is complex, yet the influence of religious precepts on the different legal traditions is undeniable.³ An osmotic relationship between law and religion also characterizes modern Western legal systems. Beliefs related to faith are essential to the values behind the principles and legal rules of contemporary society. We can go as far as to say that without understanding the inherent religious values, it would be difficult to reconstruct today's legal systems.

For the faithful, all religious precepts to which they relate are imbued with a binding value affecting the 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.

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. 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 law. It follows that religion is also capable of obstructing the elitist 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 sense;⁴

³ See Glenn (2011).

⁴ See Ricca, (2008a); Id., (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 help.

Denominational laws may form the backbone of the production of national and supranational legislation, as they suggest institutions and forms of protection.⁵ 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.⁶

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.⁷

In the economic field, especially, we are witnessing the spread of best practices anchored to behavioral rules that find their origin in denominational laws, and for this reason are supported by a greater feeling of duty. The faithful observer of the law assigns them a prominence not only in relation to the law produced by the State, which in fact cannot carry out an effective governance function in the global market, but also driven by internal rules. Religious affiliation invokes, therefore, a proper space for affirmation in economics, also influencing the performance of acts that seem to lie outside the logic of the market. Religion can help in finding a fair balance between pushing for revenue maximization (typical of capitalist economic systems) and fulfilling the duty of solidarity and responsibility (in deference to religious precepts). The function of values is especially important in a world that tends to become smaller and smaller due to the rapid mobilization of capital, goods and people on a global scale.⁸

2. Legal solidarity between law and religion

There is always a direct connection between equality and inequality. It is impossible to take the first as the only principle or to completely eliminate the second.

Though we are inevitably born different (in our physical characteristics, familiar circumstances, etc.), we should be equal in the opportunities that the law—intended as a system of rules of civil life—should guarantee for everyone. The new challenge for economists and lawyers is to understand if it is possible to have a true redistribution, or if this would represent a deterrent to growth. Is it possible to effectively intervene against inequalities while implementing efficient economic systems?

⁵ See Fuccillo, (2008).

⁶ Roy Rappaport pointed out that religion is essential to the continued evolution of life. According to this author, rituals to be intended as the execution of more or less identical sequences of formal acts and non-codified expressions represent the basis for the creation of religion. Starting from this assumption, by combining adaptive and cognitive approaches to the study of humanity, A. offers a comprehensive analysis of the evolutionary significance of religion, considering it as co-extensive with the invention of language and therefore of culture as we know it today. These arguments are primarily expressed in Rappaport, (2004).

⁷ Fuccillo, Sorvillo and Decimo, (28/2017).

⁸ See Fuccillo, (2017b: 57 ff.).

In three recent essays entitled *Il volto beffardo del diritto* (The mocking appearance of law) by Sergio Ferlito, *Giustizia roba da ricchi* (Justice, a business for the rich) by Elisa Pazè and *Il capitale nel XXI secolo* (Capital in the Twenty-First Century), it is well shown that modern law has lost its altruistic function.

Nevertheless, altruism is one of the core values underpinning the legal system in its constitutional law in Italy. This is a rendering of values that give the person and all of his needs the central role. Art. 2 of the Constitution, for example, does not establish an indefinite and general principle of solidarity, but rather states that in acknowledging the inviolable rights (of man), the Republic (...) expects that the fundamental duties of political, economic and social solidarity be fulfilled. This is a duty that permeates all relations of constitutional significance. This is so true, that Art. 3, second paragraph, of the Italian Constitution (with considerable resolve) recognizes the abstractness of a definition of formal equality and assigns to the Italian Republic the task of removing any obstacles to an effective development of the human person.

Solidarity then, would be needed to ensure equality in the enjoyment of fundamental rights. Many other articles of the Constitution contain references to solidarity. In the context of the economic rights, for example, we can consider Article 36 on the workers' right to remuneration commensurate with the quantity and quality of work, or Article 38 on the right to be assured adequate means for their necessities in case of accident, etc., and to private-sector assistance, but also Article 41 on the freedom of private economic initiative, or Article 45 concerning the social function of co-operation and trade.

In the Italian Constitution, therefore, solidarity is configured as a fundamental legal principle, with a potentially unlimited range, although dependent on the introduction of additional legal guidelines and refinements in the interpretation of constitutional data. It is, however, a fact that the Constitution has assigned a central role to human dignity and has thrown new light on the meaning of the constitutional solidarity principle, one that defines the relationship between individuals and social groups, as well as between individual, social groups and public power.

Religion plays an important role among the elements influential to the Constitution. Indeed, it appears evident that the Constitution gives great importance to religiously-rooted conduct, among all human behaviors in life, well aware of the social role it plays and of the fact that believers also pursue eschatological ends which could lead to conflicts of loyalty. From this perspective it is essential to consider the ancillary and instrumental relationship between the so-called social rights and the rights of freedom. Four articles of the Italian Constitution refer to the religious phenomenon: Art. 7, 8, 19, 20, 3—on the so-called principle of equality which excludes any possibility of discrimination based on religious grounds—2 and Art. 18 on freedom and the right to form associations within which the personality of the individual is expressed. The secular nature of the state is also among the main principles of our legal system as an unfailing prism through which to read every single legal position, albeit with due respect for cultural differences.⁹

Religion usually has an important normative value in the dynamics of social development. It is a marker that contributes to the formation of the culture of a people, and in that sense also affects the

⁹ About the principle of secularity, see for example Tedeschi (1996); Tedeschi (2010: 109 ff.); Cardia (2011); Rodotà (2010); Stefani (2007); Prisco (2007); instead, for its intercultural meanings, see Ricca (2012a: 1 ff.); Id. (2012b: 9 ff.).

behaviors of the non-believers who necessarily assimilate it, sometimes unwittingly. It is also known that religion can be understood both in the eschatological sense and in terms of values.

The baggage of religious values is the substratum of all sorts of behaviors with legal elements, attributable to the category of the civil projections of religions, where they prevent distorted interpretations of the law during its production and its application, reducing therefore its sometimes negative interpretation.

This attitude puts religion at the basis of the processes necessary to overcome the inequalities which impede the functioning of democracies, dividing the world of the privileged from that of the excluded. This is how the fracture present in the so-called developed countries—usually those of the “western world”—should be interpreted. Within this profound schism, there is nothing less than the betrayal of the law, and especially its longtime altruistic function.

3. Religious solidarity in the economic relations between private individuals

The suggestions religions can offer to positive law can be observed in many private law institutions, which seem to conceal interpretative codes. Importantly, these can only be decoded by someone who is familiar with them. Also in an intercultural sense, therefore, solidarity represents a key element, suggesting interpretations of private institutions which have an operative aspect as well, in an ethical sense.

The relationship between religion and the law is present in the everyday practice of interpreters of the legal system. Indirectly, the legacy of religion is also clear in the terminology of many institutes of the civil code such as family, guardianship, curatorship, and successions. In fact, religions ask the faithful to follow behaviour characterized by shared social values which are often subject to state laws.

In the report of the Minister of Justice Grandi in the Civil Code of 1942 it is stated that, “The duty of solidarity has its roots - and it cannot be otherwise - in the awareness of being members, with equal moral dignity, of that great body which is the national society. It is the duty to behave so as not to injure the interest of others outside the bounds of legitimate protection of interest.” Here are several examples.

The right to property is limited to protect the interests of the community and of the nation (Art. 832 C.C.). The same report of the Minister of Justice traces back the prohibition of emulation (Art. 833 C.C.) to the principle of solidarity between individuals and to a rule subject to public interest in the use of the goods.

The principle of solidarity also emerges in the discipline of obligations. In particular, we can see it in the duty of fairness and good faith in the pre-contractual phase (Arts. 1337 and 1338 of the Civil Code) and in the execution of the contract (art. 1375 C.C.), in the discipline of termination in its variants of the state of danger (Art. 1447 C.C.) and the state of need (Art. 1448 C.C.), in its resolution for excessive onerousness (Art. 1467 C.C.), and finally, the prohibition of compound interests (Art. 1283 C.C.).

Some of these principles also evoke those of some major religions. In Islam, for example, there is the prohibition of *ribā*, which can be translated as a general prohibition of unjust enrichment or

illegitimate financial benefit.¹⁰ State laws against usury (such as L. 108/1996), deemed unlawful per se, appear to retrace the path traced by religious values. Precepts against usurious interest rates are common, for example, to the Abrahamic Faiths. The prohibition of usury in Jewish tradition is present in the book of Exodus (XXII, 24-26), Leviticus (XXII, 35-38) and in Deuteronomy (XXIII, 19-20)¹¹. The exhortation to the Jewish people was to be moderate in the application of interest rates towards foreigners, provided that the brother-foreigner distinction prevented the application of interest rates to the Israelites brothers. In the context of Christianity, no distinction for religious affiliation was originally practiced. In the Catholic Church the ban on application of usurious interest rates has survived almost to the present day and it has been abandoned only due to the failure to reproduce it in the *Codex juris Canonici* of 1917 and in the Code of 1983, from which there is no trace of the prohibition law. However, the practice is clearly condemned in many documents of the Magisterium. With regard to the Islamic tradition, the strong condemnation of the Prophet towards financial abuses is well known. The prohibition of *ribā* in is established in the Qur'anic Revelation (Holy Qur'an, II: 275-280; III: 130; XXX: 39).

According to the interpretation given by the Supreme Court, the principle of honesty and good faith in contracts works as “a criterion of reciprocity that in the new framework of values introduced by the Constitution, constitutes a declination of the mandatory duties of social solidarity protected by Art. 2 of the Constitution (...).¹²

The principles of good faith and fair dealing, then, are part of the connective tissue of the legal system. On this issue, the Supreme Court also stated that “the obligation of objective good faith or fair dealing represents an independent legal duty, which is an expression of a general principle of social solidarity, whose process of constitutionalisation is now accepted (in this regard, see among others, Cass. 15 February 2007, n. 3462). Once placed in the context of the values established by the Constitution, then, the principle must be understood as a specification of compelling duties of social solidarity imposed by art. 2 of the Constitution, and its relevance is expressed in imposing on each of the parties of the mandatory relation a duty to act so as to preserve the interests of the other, regardless of the existence of specific contractual obligations or of what is expressly established by individual laws.¹³

According to this interpretative prism, even the duty to compensate an unjustified injury (Art. 2043 C.C.), the action against unjust enrichment (Art. 2042 C.C.) or the administration of others' affairs (Art. 2031 C.C.) are sources of obligations with the purposes of justice and equity that the legal system must respect, especially if it wants to express a spirit of solidarity from its core. These principles even inform the system of company law.¹⁴

¹⁰ According to a minimal definition, the prohibition in question would indicate any profit or illicit gain resulting from the imbalance in reciprocal value of performance relating to relations between debtors and creditors, the exchange of goods of the same species or of the same kind, that is the provision of a service, and sustained by the same valid grounds. For further information, see the entry *ribā*, in Bearman, Bianquis, Bosworth, van Donzel, Heinrichs (Ed.), (2000: 508); Nonne, (2011: 831-871); Iqbal, Llewellyn, (2002).

¹¹ In the law of Moses, the prohibition of the exercise of exempt activities (*exercitium foeneris*) are completed by the Psalms of David (Psalms, XV, 1-5) and the Book of Moses.

¹² See Cass. CIV., 5 November 1990, n. 12310.

¹³ See Cass. Civ., Sez. III, 18 September 2009, n. 20106.

¹⁴ See Fuccillo, (2014: ff.); Decimo, (2/2015a: ff.).

Among the cornerstones of the cooperative system there is of course the solidarity principle. Article 45 of the Constitution of the Italian Republic recognizes the social function of co-operation of a supportive mutuality and non-speculative nature. Expression of that principle is the prohibition of the *Patto Leonino* - the agreement through which shareholders could be excluded from profits or losses (Art. 2265 C.C.) - intended to protect a form of economic solidarity (in profits and losses) of the shareholders.

This setting has changed over time. Solidarity has been replaced by readings and interpretations of private law, too often calibrated on the defense of the stronger rather than the weaker. In this way the most disadvantaged populations have seen the weakening of the only barrier that has always protected them, namely positive law. It may instead steadily strengthen itself through the proper use of statutory financial institutions using them as substantial meta-normative principles, through which to convey in the operative system constitutional values, among which solidarity stands out.

This legal deficiency can be seen through observation of the costs of access to the justice system that have grown exponentially in time (at least in the Italian legal system), but also through the costs of qualified defense technology which in increasingly complex systems is the sole prerogative of the strongest groups.¹⁵

In a highly globalized economy, the dimming of the solidarity principle emerges even more.¹⁶ Economic globalization has brought down the obstacle of the nation-state, which in its own system prevented the law of the strongest from prevailing in human and social relations, promoting instead social solidarity. The wild expansion of markets and finance has led to very high levels of inequality in income, and in resources and opportunities, bringing benefits to only one fifth of the world's population and marginalizing the remainder.

In response to this process, religions promote and safeguard solidarity and human dignity¹⁷. Their transnational character, in contrast to the territoriality of state systems, favors the affirmation of values that counteract the negative effects of speculative finance. In most cases, religious teachings refer to the globalization of solidarity, pointing to the shared responsibility of religions towards the whole world: "The great challenge of our world is the globalization of solidarity and brotherhood instead of globalization of discrimination and indifference."¹⁸

As evidence of a renewed commitment of religions in the social sector, we can look to non-profit organizations of denominational inspiration. Today, religious entities are heavily engaged in activities for the common good. The backward movement of the State in the so-called third sector and social and economic crises of recent years have strengthened the role of religious entities in these dynamics¹⁹. The nonprofit sector, in which a dominant space is occupied by religiously oriented organizations, makes up for the shortcomings of the State, and for the simultaneous loss of confidence in the market economy, representing "the third way for the realization of general

¹⁵ See Mattei, Nader, (2010); Mattei, (2006).

¹⁶ See Rodotà, (2016: 3 ff.).

¹⁷ See Mazur, (2004: 197 ff.).

¹⁸ See Francis (2015).

¹⁹ With reference to the evolution in legal terms of the third sector in Italy, the literature is vast. See, for indicative purposes Ponzanelli (1994); De Giorgi (1999: 287 ff.); Rescigno (2006); Zoppini (2007); Alpa (2011: 199-228); Bancone, (2011); Santuari, (2012); Grumo, (2003: 37-63); Carmina (2015: 523-547); Rossi (2015).

economic well-being of the person, alternative both to the market, and to the disbursement by the State.”²⁰

In relation to this last aspect, religious entities are shock absorbers of social and cultural conflicts and the economic inequalities of society. Some studies have shown that the cessation of religious, charitable activity and assistance in a city on the part of a religious organization contributes to a social and economic collapse of the community in which it operated²¹. The value of the religious element in society lies in its role as a counterweight to the alleged moral predominance of the values of the market economy, which tend to align legal systems with the logic of profit and consumption.²² The function of values and religious rights must be fully expressed also in the legal field by helping to revitalize the idea of a civil law in the constitutional legality.²³

Among the examples of solidarity purposes there are the special-purpose assets. Our legal systems. conceptions (civil law) derive the institution of special-purpose assets from Roman law. In Roman law the fiduciary agreements of two kinds—with a friend (*fiducia cum amico*) and with a creditor (*fiducia cum creditore*)—have evolved in common law systems into a broad acceptance of fiduciary purposes through a patrimonial separation and sometimes the anonymity of the instructing participant, as well as a non-pre-individuation of the recipients.²⁴ In the last two decades, our legal system has begun to develop a whole range of legal instruments which allow, and in some cases promote, patrimonial separations, not only seen with the disfavor of possible fraudulent activity.

As for asset management, ratification and enforcement are emblematic (through the L.n. 364/1989) of the Convention on the law applicable to trusts and on their recognition, adopted by the tribunal in The Hague on 1 July 1985. This is the same for the introduction, with the L.n. 51/2006, Art. 2645-ter of the Italian Civil Code, of the discipline of assets intended for a single deal (arts. 2447 bis et seq., C.C.) and the contract of trusts (introduced with the L.n. 112/2016). In some cases, asset segregation is used to promote the business of entities represented by individuals and/or corporations. For example, Art. 4, paragraph 3, of Legislative Decree No. 117/2017 supports the

²⁰ Salatino (2011: 395). The nonprofit sector has redefined «the traditionally studied boundaries» of the State and of the market, «precisely because these were examined as part of a mixed capitalist and welfare economy. When this system is in crisis and new non-profit organizations come on line, there is a change in terms of comparison, since it is civil society that reappears and claims a role in the legal system, therein assisted by the crisis of mixed economy and the growth of so-called civil or social economy or, if we prefer, solidarity-based economy», affirms Ghetti (2001: 98), who also notes that «the importance of the presence of these subjects is made even greater with the crisis of the welfare system due to the difficulties of public finance to bear much of the burden related to benefits that are provided by the welfare State. These difficulties - which often become an impossibility - do not eliminate the need for these services. It is, therefore, a matter to identify the sector which should deal with them».

²¹ Kinney, Combs (2016: 321-473).

²² See Fuccillo (2015b); Sorvillo (2016c).

²³ One of the supporters of this theory is Perlingieri (1980: 107), who states that the regulatory range of constitutional principles means that they do not need an implementation/realization through ordinary law to be applied. Even when there is an ordinary law present, it does not exclude the direct application of the constitutional principle, according to which the ordinary rule must still "coordinate itself". For different opinions, see the careful doctrinal reconstruction carried out by D'Amico (2016: 443 ff.). See also Izzi (2012: 58 f.); the issue has also been widely discussed by Perlingieri (1984: 714 ff.).

²⁴ Concerning the importance of traces of Roman law for the development of contemporary legal systems, see *ex plurimis*, Palma (2016), where the author in its introduction (*ibidem*, 1 ff.) underlines the *nomopoietic* function of the Roman civil process with its effects reverberated in the current system.

activities of ecclesiastical entities of social interest or oriented to achieve charitable purposes with some public funds.

Through the 2645-ter C.C., the Italian legal system, by limiting the application possibilities, identifies the following aim: the creation of interests deserving of protection relating to persons with disabilities, public administrations, or to other entities or individuals through the destination of immovable or movable property entered in a public register.

Is this truly the case? Or could the allocation capital from an intercultural perspective find, for example, new operations? In fact, the rules in the Code can be used for the realization of interests deserving of protection related to religious freedom. An example is the use of Art. 2645-ter C.C. for the protection of places of worship of denominations different from the Catholic and the Jewish ones, especially for those places of worship for which the applicability of the constraint of destination to public worship is excluded. In fact, the same concept of worship changes according to the religious perspectives of different places. Some religious denominations, particularly the Eastern religions, both for the number of their faithful and for their different cultural practices, have different rituals compared to the traditional Western religions. In the Buddhist or Hindu religions, there can be buildings that are not open to public worship but are instead only intended for the faithful, or adherents. The traditional interpretation of existing regulations requires that there is no public worship if the building is intended only for members of a religious community, without the admission of the public. Furthermore, some religious traditions believe that the place of worship is only a place to unite the faithful, without any sacred significance.

The above allocation of capital functions as a bridge with both common law cultures and the manifold legal Muslim worlds, which in turn include similar provisions (*Waqf*). In this way, state legal systems and religious rules show a specific attitude to interpenetrate and assure a creative inclusion of religious values in the secular laws. The allocation of capital can be taken as an archetype of the *nomopoietic* potential of religious laws, when conveyed within the secular legal institutions in economic civil systems.

4. Religious rights as allies of secular legal systems in overcoming inequalities.

The consideration of the values that emerge from denominational rights for the operational aspects of secular legal systems increases the importance of the religious factor in civil law systems. This promotes the right legal dimension of problems in modern societies and, interweaving with economy, becomes a prism through which to solve some delicate social issues such as that of widespread poverty. Religious values and rights can be retrieved as a means to rebuild the system of solidarity and equalization of the law.

It is within religions that poverty often takes refuge, although this generates forms of social segregation. If on the one hand religious affiliation (as well as belonging to a minority group) can create identity and/or cultural ghettos, on the other hand it can be used precisely to overcome this situation. For example, it is from this perspective that the constant exhortations of the social teachings of the Catholic Church should be interpreted.

From this perspective, the relationship between religion, law and the rules of economy have been studied by the those interested in the legal sciences. Some research has shown how religions influence

economy and promote the economic development of society. The market offers many opportunities for religious marketing, as the economic and social role of religious organizations is extremely important.

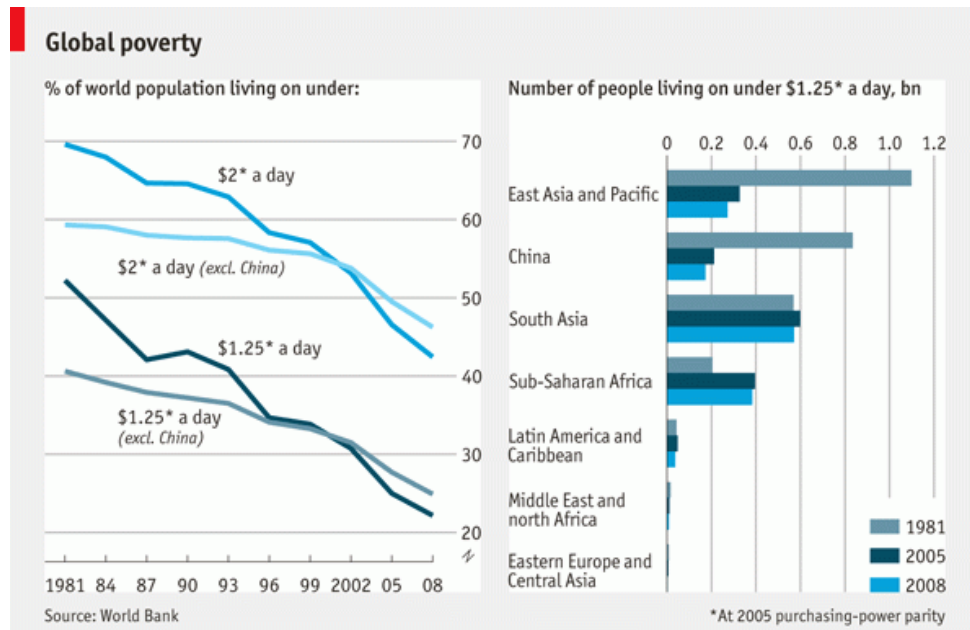
There is a clear functional link between religious freedom and economic welfare. In places where there is religious freedom and believers are adequately protected in the exercise of their religious practices there is an increase in economic activity in general, and in particular of domestic and foreign investments.

The protection of religious freedom is also a source of growth of social welfare. The happiness of an individual is partly determined by the degree of religious freedom which he has in the environment where he lives. One can thus say that higher standards of religious freedom will align with improved socio-economic performance, intended as significant increases in the ethical quality of products and greater respect for workers' rights.

Taking advantage of this endemic propensity, religions can effectively act as a barrier against poverty and as redistributors of economic resources. This can be accomplished by following a twofold approach. On the one hand it is possible to elevate the economically most vulnerable sectors of populations, on the other hand a greater legal dignity can be given to situations of destitution and poverty (already from denominational law and then from State law as well).

Concerning the first aspect, there are significant guidelines elaborated by the Catholic Magisterium aimed at the recovery of moral values in economics, and towards a better distribution of the planet's resources. The practical implementation is enacted by the so-called civilian economy, or the economy of communion. A possible match at a national level is provided instead by the category of metaprofit. This term refers to entrepreneurial actors who perform an action which is teleologically oriented beyond (*meta*) mere profit and who address their goals towards humanitarian, social and environmental purposes. This in the belief that the ethical development of the enterprise represents a logical category vital both to the sustainability of the current economic model and to integral human development.

The introduction in Italian law of the so-called benefit society (established with the Stability Law of 2016, Law of 28 December 2015, n. 208, paragraphs 376-384), and SLaVS (an acronym for innovative startups with a social mission introduced by the Decree-Law 179/2012, converted by Act 221/2012), is an empirical proof of the existence of the above mentioned category.



The legal treatment of poverty is certainly more complex. Poverty is endowed with its own dignity because it can even stem from the free choice of a sober lifestyle, which as such receives full constitutional protection. However, we should work with appropriate and adequate means of effective legal protection and in that sense, it is possible to see a political lobbying on the part of religions for the legal protection of poverty. The new challenge is to find legal spaces for a proper operation of social improvement. It is necessary to identify concrete tools for the assignment of a stable right to maintenance to the most disadvantaged sections operated by systems already in favor of wealth. We must therefore reiterate the full dignity of the needy when facing the legal system, and that the status of poverty must fall under the protective umbrella of State systems. The support of religious rights is helpful to achieve this goal.

Forms of stable participation of religious denominations in national and international institutions should be evaluated under this perspective. In fact, they are not limited solely to the institutional representation of religious interests, but can go as far as the identification of good practice for the composition of institutional imbalances.²⁵

Therefore, through the active role of religions, inequality and poverty remain at the core of juridical discourse. Religious values and religious rights contribute to making the processes of administrative self-analysis more just, by curbing the interpretations of the law that benefit the economically dominant social classes. This function is substantial because any deficit of reflexivity always subtends an obstruction of the democratic process, while religious values can contribute positively to fill it.

²⁵ Macri (2016).

5. Religion and economic development.

Religion plays a central role in the dynamics of social development²⁶ and it is from this perspective that it can act as a motor for economic development.²⁷

In fact, the driving force of religious freedom that fosters the economic well-being of society is well known. This interesting perspective has recently found advocates who believe that religious freedom and economic welfare are directly connected in the sense that the development of the first would result in a proportional increase of business opportunities.²⁸

In places where there is religious freedom and believers are adequately protected in the exercise of their religious practices, social tensions and potential conflicts between different groups decrease and there is an increase in economic activity in general and, in particular, of domestic and foreign investments.

Religious Freedom Correlates With Well-being in Countries



Data: UN, IMF, etc. for up to 200 countries (number of countries compared varies depending on data availability).
Analysis: B.Grim & R.Finke, 2011, *The Price of Freedom Denied*. Cambridge University Press

In light of the considerations so far elaborated, it is necessary to increase the level of religious freedom not only through declarations of principle, but by adopting concrete legal instruments that will help this process. It is therefore necessary to intervene also towards the quality of that fundamental right. In fact, local traditions go hand in hand with cultural ones, and there is no doubt that religions play a decisive role in this context, with the effect of producing an encounter between different faiths which, if not governed by a truly intercultural legal system, can easily turn into a clash. It is therefore necessary to create the conditions so that foreigners and minorities have the right to be recognized within law and not only in front of it.²⁹

The paradox is that, in spite of great formal safeguards, the need for religious freedom in the world is growing dramatically, not only in countries where traditionally it is met with mistrust, but also in the Western world, because the law is no longer able to incorporate and therefore to regulate all instances

²⁶ See Nussbaum (2000: 205 ff.).

²⁷ See Fuccillo (2017b: 57-74).

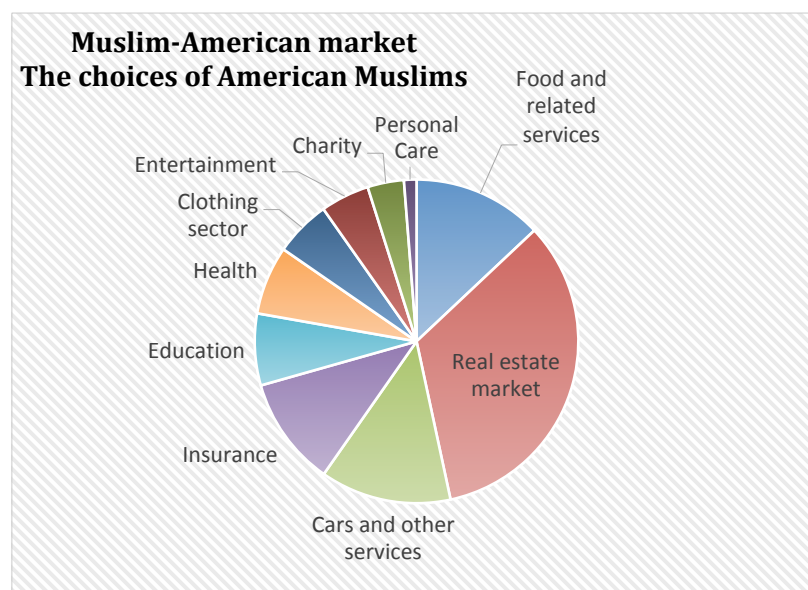
²⁸ See <http://religiousfreedomandbusiness.org>.

²⁹ Ricca (2012b).

coming from groups of faithful. Therefore, religion is again a protagonist of civil society, and it gives law the delicate task of acting as a measure of human actions inspired by religious affiliation.

As a consequence, there is an exponential growth in the world of research centers on Law and Religion³⁰ and of conferences dedicated to these issues, because the need to rewrite the rules of civil coexistence by renewing the role of religions in the dynamics of episodes from the lives of people is evident.³¹

Religions, therefore, inspire and recommend to their followers a series of behaviors that translate into actions and deeds full of legal content. From this perspective we can talk about the impact of religions on civil law. These behaviors develop in the world of law inspiring people's choices among the various legal arrangements drawn up by jurisdictions, with the effect at times of leading to a shift of causes, and to a different interpretation compared to that typical of the traditional cultural background. These projections also invade the economic sphere. Religions with their brands and suggestions are one of the ways of overcoming the information asymmetries of consumers³². They intervene with their canons in the rules of the market, becoming a conditioning element. A relevant example can be found in the food business.



Religions guide the eating habits and choices of the faithful in accordance with religious precepts. They determine the "canons" (from the Greek κανών) or legal rules of behavior. The dietary advice of religious denominations is transformed into real legal precepts for a provision of religious rights or customs, but in both cases the effect does not change, meaning that often there is a tendency to

³⁰ There are numerous European and international centers for the study of "law and religion". Among the most important are the Center for Law and Religion at Cardiff Law School, the International Center for Law and Religion Studies at BYU Law School, but also the Center for the Study of Law and Religion (CSLR) at the University of Berkeley, the State University of Milan ICLARS, etc.

³¹ Fuccillo (2017b: 57-74).

³² See Fuccillo, Sorvillo (2013: 217-233).

consume what one's own belief suggests or has suggested over time. The thriving market of foods is not only directly affected, but it must analyze religious eating habits and their direct impact on consumption if it is to leverage opportunities through some sort of religious marketing.

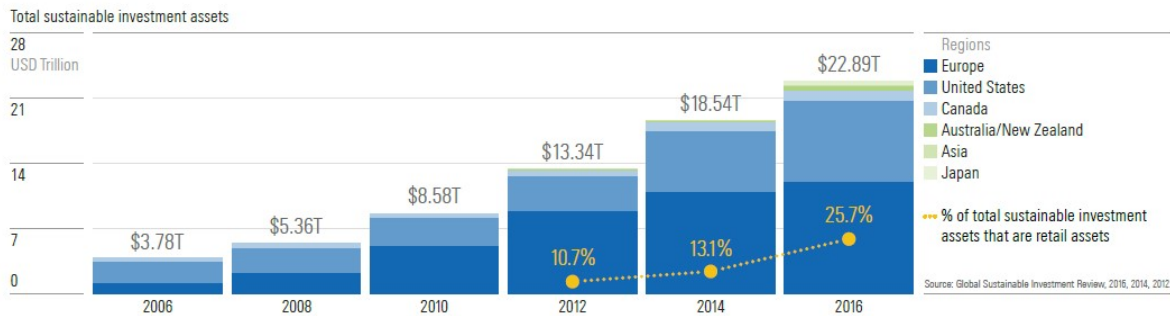
Even if it could seem a paradox, belonging to a religion is always an exercise of freedom with influence on the exercise of other forms of freedom related to the primary needs of human beings. The right to eat according one's own religious belief is certainly a form of exercise of religious freedom which is particularly visible. From a technical and legal perspective, the demand for such services from users has an impact on the cause of the supply contracts, with evident effects both on the estate of legal transactions and in its allocation in the market. In fact, to request such religious services, adhering to a special offer of the entrepreneur, becomes on the one hand a justifying reason of the choice to use them, and on the other hand a real legal obligation for the service provider. The contract, then, becomes the place of definition and protection of religious freedom, acquiring more and more the nature of an institution that protects intercultural relations.³³

The shift of wealth from property to financial securities has also changed the ethical criteria in economics suggested by religions. Recently, expressions of religious freedom have been bound to the selection of financial products. In the market there is the affirmation of standards that define the sustainable approach to investment. The so-called Principles for responsible investment (PRI) from 2006 are included in the operational guidelines of the United Nations. They commit themselves to implement the ESG factors (Environmental, Social and Governance) in analysis and investment processes, as well as in policies and business practices. ESG drivers of environmental protection and respect for human rights are also among the scoring criteria of sovereign States.

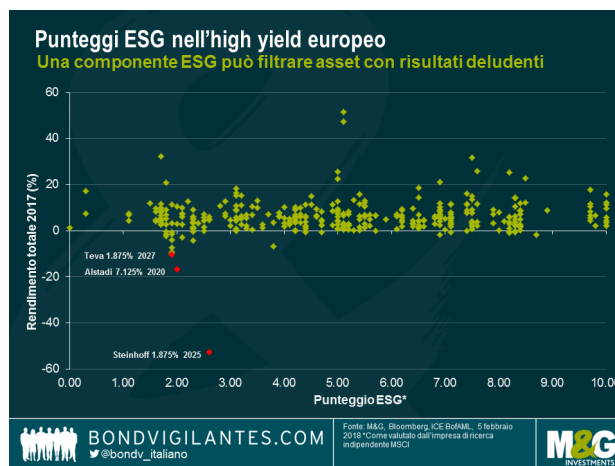
Fondi etici, chi vince a tre anni		
Dati in euro al 21 ottobre 2016; fondi venduti in Italia		
Fondi etici, chi vince a tre anni	Categoria Lipper Global	Vari. % a 3 anni
Vontobel mtx Sust Asian Leaders (ex Japan) B	Equity Asia Pacific ex Japan	55,75
Stewart Investors Asia Pacific Sustnbl A GBP Acc	Equity Asia Pacific ex Japan	52,84
Brown Advisory US Flexible Equity SRI B USD	Equity US	49,3
BNP Paribas Easy MSCI N Am ex CW Track Cl C	Equity US	48,55
Vontobel Fund MTX Sust Emerging Mkts Leaders A	Equity Emerging Mkts Global	47,9
RobecoSAM Sustainable Water Fund B	Equity Global	47,28
BNP Paribas Aqua P Accu EUR	Equity Global	47,23
BNP Paribas L1 Equity World Aqua C C EUR	Equity Global	47,19
Candriam Sustainable North America C Cap	Equity US	44,25
Vontobel Fund Clean Technology B	Equity Global	43,96
PIMCO GIS Socially Responsible EM Bond I USD Acc	Bond Emerging Markets Global HC	43,58
Pictet-Water-P EUR	Equity Global	41,3
JSS Sustainable Equity - USA P USD acc	Equity US	41,16
ERSTE RESPONSIBLE STOCK AMERICA USD A	Equity US	38,8
Pictet- Global Environmental Opportunities-P EUR	Equity Global	37,75

Fonte: Lipper

³³ Ricca (2008: 168-174).



Religions in this respect suggest measures to push the world toward greater social justice and less inequality, and in so doing encourage selection criteria for investment portfolios that are also based on the ESG model, while excluding others.



Denominational interventions in economic matters are becoming more frequent and, consequently, are followed by financial analysts who pay great attention to the issue. Some reports deal with ESG fund performance and push investors to sign management contracts bearing the fideistic principles of customers.

Among the exclusion criteria defined according to Catholic values are: the disinvestment in the production of GMOs and tobacco, gambling, pharmaceutical abortifacient and stem cells in drug production, the arms industry and, more broadly, in companies or enterprises disrespectful of human rights.

On the contrary, the elements of enterprise integration of ESG are the enhancement of environmental concerns (reduction of CO₂ emissions, integrated waste management, use of clean technologies), social concerns (respect for human rights, human capital and respect of labor rules and product safety), as well as correct corporate management (fighting against corruption, organizational transparency, equitable remuneration). Inequality and sustainability issues are also present in the international agenda and have been the focus of the discussions of the last Economic Forum in Davos. Also, within the international context there is the need to restore the balance, protecting the right of the poor and rebuilding fair societies which meet the needs of all.³⁴ This is also in line with the targets set in the Global Compact and the so-called Global Goal.³⁵

Another example is in the rules that govern Islamic finance. The latter, having moderated the inversion of the relation between capital and real output, were an antidote to the damaging effects of the so-called creative financing, and created a growing market even during the crisis.³⁶ They have traced a competitive advantage that has prompted traditional banks to provide Shari'a compliant products as an element to access new markets of denominational inspiration.³⁷ In the latter, respect for religious observances does not exclude profit and individual success.

6. Redistribution and sustainable development: another mission for denominational rights.

Is it possible to grow without excessive competition and aim for sustainable development which takes into account redistributive financial techniques and adequate distribution of work?

The theme of a more human economy has become central and an increasing number of experts try to place this new logic within economic action. A management of economy and businesses linked to shared values is suggested.

The economist Richard Blundell for example, through studies on inequality of household income in the UK and in the United States and the interaction between the earnings of the labor market and the tax system, highlighted the social imbalances existing in modern economies and the significant changes in the employment.³⁸ According to the authoritative expert, the expansion of welfare systems plays a key role in balancing the growth of net income through wage redistribution. A weak safety net has tested negative for net incomes. This confirms the importance of developments in meta-profit as a means of compensating the inequality of opportunities.

³⁴ For the necessary insights on the topic of inequality, and the simultaneous need to rebuild a sustainable economy see the 2018 International Report of OXFAM entitled "Reward work, not wealth", presented at the Economic Forum in Davos, also fundamental for its massive bibliography and methodological survey reference.

³⁵ On the Global Compact and the Global Goal the main reference is to the respective official websites: <https://www.globalgoals.org/> and <https://www.unglobalcompact.org/>.

³⁶ See D'Arienzo M., (2011: 21-41).

³⁷ On this point see Sorvillo (2016a); and also Id. (2016b).

³⁸ See Blundell, Joyce, Norris Keiller and Ziliak (2017).

The path traced by the new idea of social economy also fits the position of those who propose the use of circularity in consumption. It is essential to rebel against the culture of the disposable and the sole obsession of claims for private rights and the accumulation of goods.³⁹ This theoretical thinking tries to respond to the contemporary crisis and dilemmas of the relationship between ethics and economics with new visions of thought, including the referral to religious values.

In fact, it seems fundamental to guarantee an economic development compatible with social equity and ecosystems, and operating under perfect environmental balance, respecting the so-called three “Es” rule: Ecology, Equity, Economy.

It follows, therefore, that the pursuit of sustainable development depends on the ability of State governance to ensure a complete interconnection between economy, society and environment.

From these reflections it is clear that there is a direct connection between equality and inequality. As mentioned, it is not possible to assume as principle the first nor to completely eliminate the second. However, if we are born different (in physical traits, family situations, etc.) we must be equal in opportunities that law (as a system of rules of civil life) must ensure to all.

In this way there is a contrast between development economists and structural inequality economists, who consider the forms of imbalance as endemic to income growth. Among the first ones, on the other hand, normative theories are essential, and they push for State interventions of redistribution, mainly through taxation. It is appropriate, therefore, to understand whether and how it is possible to measure economic inequality, working then to provide the necessary regulatory solutions. From this perspective, the economist Amartya Sen identifies regulatory measures as an antidote, since it is evident that there is a need to overcome the inequality of opportunities. The real way, then, to combat economic inequality is to fight for opportunities, guaranteeing to everyone as much as possible.

The creation and development of 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—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 people.

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³⁹ In this sense Segrè (2017).

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