POST-COMMUNIST ORTHODOX COUNTRIES AND SECULARIZATION

THE LAUTSI CASE AND THE FRACTURE OF EUROPE

Father Capodistrias Hämmerli

Introduction

This essay explores how the accession of post-Communist and Orthodox countries to the European Union and the Council of Europe during the last two decades has impacted the process of secularization in Europe. Post-Communist Orthodox countries provide an alternative approach to secularization that has come to play a significant role in today’s political debates concerning the role and place of religion in modern society in Europe.

I shall illustrate my argument with reference to the case of Lautsi v. Italy. In 2009, the European Court of Human Rights (ECHR) ruled that the Italian government was in violation of the European Convention on Human Rights by permitting crucifixes to be displayed in public school classrooms, arguing that it broke from the principle of the confessional neutrality of the state. Twenty of the forty-seven member states that comprise the Council of Europe intervened in the case, supporting the appeal of the Italian government against the ECHR decision. The majority of those twenty states are post-Communist countries, and predominantly traditionally Orthodox countries. They contested the ECHR’s authority to impose the principles of laïcité and confessional neutrality on countries, in contradiction to their national culture and religious traditions. This essay argues that Lautsi v. Italy revealed a division between Eastern and Western Europe over the role of Christianity in Europe’s political and cultural identity.
This paper will examine some historic and religious specificities pertaining to post-Communist and Orthodox countries that explain their different approaches to secularization. The historical experience of radical, forced secularization under Communism provides a solid basis for the critical approach of post-Communist countries to the increasing secularization of Europe. I shall also argue that close church-state relationships and a strong bond between religious and national identities are some of the characteristics of Orthodox cultures that are leading several Eastern European countries to a different stance on secularization. I will explore this point further with reference to recent political developments in Russia.

The Crucifix Case: Background

The local conflict that was to become known across the whole of Europe as “the Crucifix Case” began in Northern Italy in 2002, in the small town of Abano-Terme near Venice. Mrs. Soile Lautsi contested the presence of crucifixes on the classroom walls of the public school attended by her two sons, then aged thirteen and eleven. In making her case, she appealed to the principle of laïcité which is recognized by Italian constitutional jurisprudence. Lautsi is a member of the Associazione Nazionale del Libero Pensiero “Giordano Bruno” (the Giordano Bruno National Association of Free Thought), whose main political endeavor is to obtain a complete separation between church and state. The Associazione Nazionale supported Lautsi during the lengthy juridical procedures she underwent. It is on the ground of her philosophical convictions, rather than on the ground of any substantial moral damage that would have been inflicted upon her sons by the public school, that Lautsi began the juridical struggle that was to last almost a decade. During the several proceedings, she consistently focused on trying to prove that the principle of laïcité was being violated by the presence of religious symbols in public schools.

First Ruling of the European Court of Human Rights

In 2006, after the Italian courts had eventually rejected her arguments and appeals, Lautsi filed a petition with the European Court of Human Rights. On 3 November 2009, the Chamber of the Second Section of the ECHR issued its ruling concerning *Lautsi v. Italy*. In its argumentation,
the court introduced formally for the first time the principle of the confessional neutrality of the state:

The State’s duty of neutrality and impartiality is incompatible with any kind of power on its part to assess the legitimacy of religious convictions or the ways of expressing those convictions. In the context of teaching, neutrality should guarantee pluralism.6

Formally, the court concluded that both the right of Mrs. Lautsi (as mother) and her children to education (Protocol 1, Article 2 of the European Convention on Human Rights) and to religious freedom (Article 9 of the convention) had been violated.7 A close analysis of the structure of the argument of the court shows that pluralism, rather than the right to education and to religious freedom per se, is the key principle that the court sought to uphold. The jurisprudence of the court considered pluralism as a fundamental aspect of democracy. According to the Chamber of the Second Section, since the displaying of crucifixes in Italian public schools could not be interpreted as contributing to educational pluralism, the practice should not be accepted.

The court argued that, since pluralism is vital to democratic societies, it is necessary to guarantee it through the confessional neutrality of the state, in order to prevent an unjust domination of the majority religion over other religions and convictions—a situation that would disrupt the equality of religions in the state. The court’s argument in favor of neutrality is founded on an induction, as is made clear by the ruling itself, already quoted above: “In the context of teaching, neutrality should guarantee pluralism.”8

The implied consequences of the ruling were far reaching: Italy should remove all crucifixes from all public schools. Moreover, since the ruling on Lautsi v. Italy was a decision of the ECHR, all member states of the Council of Europe, from Portugal to Russia, could be expected to comply with the newly enforced legal principle of the confessional neutrality of the state. All countries in Europe would be obliged to remove religious symbols from public school classrooms.

The court, through the first Lautsi v. Italy ruling, was trying to establish laïcité as a political norm that would be binding upon all the states that signed the European Convention on Human Rights. However, laïcité is not mentioned by, and therefore not guaranteed by, the convention, and in fact many countries in Europe have juridical systems that do give a
particular privileged place to their own historically and sociologically dominant religious tradition. The implicit idea in the chamber’s ruling is that European identity and unity can only rest on secular values, and not on Europe’s Christian heritage.

Reactions and Political Implications

The ECHR’s ruling provoked strong public reactions in Italy and several other European countries. The Vatican, together with representatives of many major ecclesiastical institutions, condemned the court’s decision. The Patriarchate of Moscow was a major voice on behalf of the Orthodox Church and took an active role in responding publically to the court’s decision.

The Italian government contested the decision and lodged an appeal with the Grand Chamber of the ECHR. The appeal was accepted and the proceedings resumed, with unprecedented media coverage. The Italian government’s argument was grounded on premises very different from those exhibited in the first ruling of the ECHR:

The Republic of Italy, though secular (laïque), has freely decided to preserve a tradition which dates back almost a century. . . . [This decision] is motivated by the distinctive national characteristic expressed by the close relation between state and the people, and Catholicism, at the historical, traditional, cultural, and territorial level, as well as by the fact that Catholic values have always been deeply rooted in the feelings of the majority of the population.

The strongest argument adduced by Italy was that the government, i.e., the state (which holds political power), must take account of the character of the nation. Political power (kratia) must represent the people (demos). This is the very definition of democrat. In other words, the Italian government claimed that it could not apply the court’s principle of confessional neutrality of the state in Italy without showing contempt for the majority of its own population and for its historical and cultural traditions.

*Lautsi v. Italy* acquired its real political significance with the intervention of other states. Ten member states of the Council of Europe constituted themselves officially as third-party interveners, standing against the decision of the court. These countries participated in the proceedings, each submitting to the Grand Chamber a written argument for the display of
religious symbols in public schools or public spaces maintained by the state. They also took part in a session of the court on 30 June 2010. Eight states were represented by Joseph H. H. Weiler, who delivered a rhetorically brilliant speech arguing that it is Europe’s unique characteristic to have juridical pluralism, in which each country is permitted to have its own church-state model.\textsuperscript{14} This pluralism is secured by the court’s acceptance of the Margin of Appreciation, which acknowledges that the European Convention on Human Rights will be interpreted differently in individual member states. The Margin of Appreciation was also at the center of the written submissions of the ten countries intervening on behalf of the Italian government.\textsuperscript{15}

The written statements submitted to the ECHR Grand Chamber are of great significance. Ten member countries of the Council of Europe wrote to defend the importance of Christianity in the cultural and political future of Europe. Such a third-party intervention, by states not directly involved in the case, contesting a decision of the ECHR, was totally unprecedented, as Grégor Puppinck noted:

This is really an important precedent in the practice of the Court because, usually, member States abstain from intervening, or intervene only when the case affects a national of their State as permitted by Article 31(1). The Lautsi case is unique and unprecedented. Ten States are in fact explaining to the Court what is the limit of its jurisdiction; what is the limit of its ability to create new “rights” against the will of the member States. This can be viewed as a kind of counterbalancing power.\textsuperscript{16}

In addition, ten other governments made public declarations in favor of the Italian government, opposing the ruling of the ECHR. In total, twenty-one of the forty-seven member states of the Council of Europe contested the Second Section Chamber’s initial decision.

Who Were the Intervening Countries?

It is interesting to analyze which countries constituted the opposition to the court’s initial ruling. Two characteristics emerge among those states that determined to intervene. The first is political: The strongest resistance to the court’s secularism came from post-Communist countries; the second is religious: Orthodox countries represented the majority of the opposition.
The other opposing countries were Roman Catholic. No traditionally Protestant country contested the ruling.

Taking into account these two criteria we can categorize the twenty-one countries that opposed the *Lautsi v. Italy* ruling (which includes Italy) into four classifications:

1. *Post-Communist and Orthodox*, representing approximately 232 million people—by far the largest and most significant group:
   - *Third-Party Interveners*: Armenia, Bulgaria, Romania, and Russia;
   - Public declarations in opposition to the ruling: Macedonia, Moldova, Serbia, and Ukraine;17
2. *Post-Communist and Roman Catholic*, representing approximately 61 million people:
   - *Third-Party Interveners*: Lithuania;
   - Public declarations: Croatia, Hungary, Poland, and Slovakia;
3. *Orthodox (and not formerly Communist)*, representing approximately 12 million people: Greece and Cyprus (both third-party interveners).
4. *Roman Catholic (and not formerly Communist)*, representing approximately 70 million people:
   - *Third-Party Interveners*: Malta, Monaco, and San Marino;
   - Public declarations: Austria;
   - Italy also belongs in this category, and accounts for 61 million people.
   - Albania (approximately 3 million people) is difficult to classify by religion, but should also be counted as a post-Communist country.

In order to achieve a more meaningful comparison, I have taken account of the population of each country. Through the analysis that follows, my aim is to give an impression of the importance of the reaction against the court’s ruling, and to demonstrate conclusively that political history (the experience of having been Communist) and religion (being Orthodox) did indeed play a major role in the decision to intervene in the legal proceedings of the ECHR in the case of *Lautsi v. Italy*.

The population of all the member states of the Council of Europe combined is approximately 800 million people. The twenty-one countries that contested the initial ruling of the court represent approximately 378 million
people or 47 percent of the population of the member states of the Council of Europe. In other words, the countries that contested the secular ruling of the court account for half the population of the constituent states of the Council of Europe.

Collectively the post-Communist countries that contested *Lautsi v. Italy* (leaving aside their religious affiliations) stand for approximately 296 million people, representing 78 percent of the population of the twenty-one countries contesting the court’s first ruling. If we exclude Italy and take into account only the countries that defended her, the proportion of the contesting populations drawn from post-Communist countries rises to 92 percent.

Turning now to the religious criterion, it is clear that Orthodox countries were dominant in the reaction against the *Lautsi v. Italy* ruling: They represent 64.5 percent of the opposition to the ECHR’s decision, or 77 percent, if we exclude Italy.

Half of Europe contested the secularist ruling of the ECHR: Three-quarters of the protesters were from post-Communist states; two-thirds of the protesters were from Orthodox countries—formerly Communist and Orthodox countries represent three-fifths of all the protesters. These impressive figures prompt us to investigate the reasons for such a configuration and the meaning of Communist history and Orthodox religion as factors strengthening resistance against the laïcité political model.

**The Fracture of Europe**

*Lautsi v. Italy* revealed a fault line in Europe caused by the question of the societal legitimacy of Christianity. It has made manifest the strength of the popular opposition to the secular political line that the European Court of Human Rights has been following during the last decades. The *Lautsi v. Italy* case has revealed a legal and political conflict in Europe concerning the way states should deal with the religious dimension of their own national identities. This fracture divides Western and Eastern Europe. The countries that took the unprecedented step to constitute themselves as third-party interveners in the case of *Lautsi v. Italy* are almost all from Eastern Europe.

The Chamber of the Second Section certainly did not anticipate such a determined reaction to its ruling—had it, the court would have given a much more detailed argument and would have addressed the application
of the Margin of Appreciation, which later became the crux of the case. The importance of *Lautsi vs. Italy* lies precisely in the fact that it has revealed this difference between East and West. During the seventy years of the Communist era, Europe was divided. During the last two decades, all European post-Communist countries have become members of the Council of Europe, and many of them have also joined the European Union. This long series of adhesions is extremely significant in the history of the Council of Europe and the European Union. Both institutions had, until then, developed exclusively in Western Europe after the Second World War. Post-Communist countries, with an Orthodox majority among them, represent now more than one-third of the population of the member states of the Council of Europe. This means that the Council of Europe, as well as the European Union, has integrated countries with a very different historical, political, and religious background. During the 1990s, post-Communist countries were in a period of transition and most of their political elites welcomed Western values and political models with enthusiasm. This situation has now partly changed in some countries. The colossal media interest in *Lautsi vs. Italy* played a role in strengthening the perception among post-Communist Christian countries (whether Roman Catholic or Orthodox) that they share a common position against a juridically imposed secularization of the state and public sphere. The ECHR, which may have regarded the employment of the principle of laïcité as self-evident progress, has come to realize through the appeal over *Lautsi vs. Italy* that the new Eastern post-Communist member states will not willingly follow the current secular Western political trend, but rather challenge it.

The Grand Chamber Ruling

The Grand Chamber gave its final judgment on 18 March 2011. The judges declared (by a majority of fifteen to two) that Italy had not violated the European Convention on Human Rights by allowing crucifixes to be displayed in public schools. This ruling appeared to be a complete reversal of the situation established by the Chamber of the Second Section, which made the initial ruling unanimously.

At the juridical level, the key element that led the Grand Chamber to revise the first judgment was taking into account the principle of the Mar-
gin of Appreciation. Although it is a well-established principle in the jurisprudence of the ECHR, the Chamber of the Second Section did not even mention it in its analysis, or in its deliberation of the case. The principle of the Margin of Appreciation allows the state a discretionary freedom to legislate religious matters, provided there is no European consensus on the issue at stake. In its final judgment, the Grand Chamber declared that it understood Mrs. Lautsi’s discomfort with crucifixes, but also underlined the subjective nature of this discomfort and concluded that the Italian state was not guilty of indoctrination (which is clearly prohibited under the convention). Therefore, exposure to crucifixes in public schools was not interpreted by the court as a violation of the applicant’s rights, or those of her children.

Since there was no doubt that the principle of the Margin of Appreciation exists in the court’s jurisprudence and has played a significant role in many similar cases, the key remaining question was: How is it that the judges of the Chamber of the Second Section did not take this principle into account at all (dismissing its importance by ignoring it—not even giving arguments against its use in this specific case), while the Grand Chamber made it the key element on which to base its revised ruling?

Considering the importance of the political reactions outlined above, it seems difficult to contest the hypothesis that the opposition of twenty-one countries, representing almost half of the population of the Council of Europe’s member states, to the first ruling by the Chamber of the Second Section played a decisive role in the final decision of the Grand Chamber. Since, in fact, the court does not have any power to enforce its decision within the borders of any individual country, with so many countries contesting the legitimacy of the court to impose a secular model over the whole of Europe, the court would have lost credibility and moral authority by confirming the first ruling.

However, the ruling of the Grand Chamber cannot be considered as a straightforward victory for the Italian government and her allies. At the level of juridical concepts, the Grand Chamber has maintained—although with some limitations—the principle of the confessional neutrality of the state. The ruling of the Grand Chamber is paradoxical, since the very principle that was introduced by the Chamber of the Second Section, according to which Italy was first condemned, has been confirmed by the Grand Chamber, and yet the Italian government was no longer considered
to have contravened the European Convention on Human Rights. In other words, on the one hand, Italy was granted freedom to act according to her own wisdom and to organize the relationship between church and state according to local circumstances, but on the other hand, the court established the principle of confessional neutrality as a norm everywhere in Europe.

The most obvious explanation for this lack of coherence in the Grand Chamber’s ruling is that the court had to accommodate two contradictory stances: On the one hand, there was its own preference for political laïcité and a clear separation between state and church; and on the other hand, there was the pressure of the unexpectedly robust support for the appeal lodged by the Italian government. Thus, the court did not condemn Italy (to satisfy the opponents of the first ruling) but nonetheless upheld the secular norm of the confessional neutrality of the state, moving its jurisprudence in the direction it wished.

Two Conflicting Interpretations of Human Rights

The debate took place in the context of the acceptance of pluralism as a legitimate foundation for contemporary democracy, itself viewed as the best and most legitimate political system. During the hearing before the ECHR, Prof. Weiler attempted to show that allowing crucifixes to be displayed in Italian public schools, and at the same time permitting France to have a political model grounded on strict laïcité, was a sign of the authentic pluralism. According to Weiler, the European model of tolerance, allowing juridical pluralism, is a most precious part of Europe’s heritage.28

Confessional neutrality of the state was necessary, according to the Chamber of the Second Section, to protect pluralism. In his defense for the Italian government, Grégor Puppinck commented on the use of the word “pluralism” in the Second Section ruling: “This constituted a misinterpretation of the second sentence of Article 2 of Protocol 1, which merely stands for the principle that in a democracy, the educative offerings should be pluralistic, not the teaching itself.”29 Puppinck further notes the paradoxical use of the principle of pluralism by the judges of the Second Section and the secularists: “This ‘pluralism’ ironically results in exclusion of the very possibility of plurality by imposing the monopoly of secularism.”30 Lautsi vs. Italy showcases a conflict of interpretation between two groups, which agree on some basic terminology—human rights, democracy, and
pluralism—but give different meanings to each of these key terms, according to the role and significance religion is accorded in public life.

At the heart of the conflict is the question: Does the Italian state have the right to give visibility to the religious dimension of its national identity in its public spaces? In other words, must the state renounce its national identity in order to respect human rights? The straightforward consequence of the first ruling was that the modern state should be removed from the continuing influence of the nation’s history and from the majority religious intuition of the people. This is a model in which the state imposes a secular norm based on a doctrinal principle, rather than one derived from the democratic will of the majority of its people. Secularists believe that excluding religion from the public sphere will prevent further religious conflict; they perceive this prescriptive norm as democratic, even when it contradicts the intuition of the majority, because it helps achieve the equality of religions under the law. The state has to remain external to any religious matters, because were it to adjudicate on religious norms or values, it would establish an unjust difference between people belonging to different confessions or professing no confession at all. This was the case made by Mrs. Lautsi: The fact that one child would see the symbol of their religion in the classroom and another one would not constitutes unjust discrimination—a violation of the principle of equality.

Defenders of the presence of religion in the public sphere perceive this type of equality as an excuse for the complete domination of secularism. Indeed, removing crucifixes in Italy means that the dominant religion will be reduced to the same status as other religions—a status of almost nil public and political influence. The Italian government and its supporters were unable to accept this logic of equality, since they desire religion to play a role in public life and to be part of the identity of the state. Therefore, religious symbols displayed by the state in schools and other public spaces are fundamental, because they show that the government of the state is true to the nation’s culture and tradition. From this perspective, democracy is not a secularist political ideology, but one that preserves the etymological meaning of “democracy” as a political system that is rooted in the will of the demos, the people. Thus the will of a local or national majority should prevail over both universal abstract principles (in this case, the secularist ideals of the ECHR) and excessively individual claims (those of Mrs. Lautsi).
Imposing a Nationless State?

Another significant dimension of the secularist argument for the confessional neutrality of the state is the unity of Europe. Secularists consistently argue that European integration requires coherent legislation to regulate religion. Nationalism is traditional by nature, because it inherently tends toward the preservation of an identity that is historically constituted: Since the history and religious traditions of Europe are predominantly Christian, patriotism almost always includes a Christian dimension. To be patriotic in Europe usually entails sympathy for the Christian identity of one’s own nation and of the continent—therefore contemporary Western secularism cannot count on nationalism as an ally in the construction of a unified Europe.

The identity and values of a state are reflected in the symbols it adopts publicly, so the idea of symbolic neutrality is impossible. Were England, Switzerland, or Greece to remove the cross from their national flags, it would certainly not be perceived as a “neutral” decision. An empty wall in a classroom in the countryside in Italy achieves neither neutrality nor equality. A state must have a flag, a national anthem, a constitution, state-funded museums, etc.—these are symbolic of the state—but they cannot be religiously neutral since national history is never religiously neutral. The meaning of state symbols is rooted in national history, and thus those symbols cannot be neutral.

For this reason, to say that states should be religiously neutral implies that they should be detached from the nation they govern. In order to be perfectly neutral, a state should become nationless, disconnected from its history and culture, supremely indifferent to the religious feelings of the majority of its own people. It is this that the Italian government could not accept in the first Lautsi v. Italy ruling. It was agreement with this challenge that led to so many vehement reactions, especially from Orthodox countries for which it is unthinkable to erase the constitutive role of religious traditions in the identity of the state.

A nationless state would enforce only individual rights, based on a principle of human equality. Philosophically, such equality entails the exclusion of national identity, grounded in the will and sentiment of the majority, since democratic laws (i.e., those that accord with the preference of the majority) are necessarily less favorable for minorities. One of the key roles of human rights is to counterbalance the power of the democratic majority, to ensure that minorities will still preserve their most fundamental rights.
But if individual rights are permitted to overrule the will of the people, can the society still properly be called “democratic”? While the Italian government and Italian laws do indeed accept the notion of individual rights, those rights need to be balanced by collective societal rights. Many supporters of the Italian government in this case insisted on that the European Convention on Human Rights does not establish the confessional neutrality of the state or laïcité as political principles.

**Post-Communist Countries**

Radical secularism in Communist countries was grounded in an atheistic philosophy that interpreted religion as oppressive and superstitious. According to Marx, religious superstitions had always played a political role and were the means through which the capitalist oligarchy could dominate the people and hold them in captivity. In the political philosophies that led to Communism in Eastern Europe, religion was viewed as a tool of political and economic domination, and the key factor that hindered the development of an equal and just society. Thus, a liberating state had the duty and responsibility to free the minds of its people from religious superstitions, which hitherto were restricting them to inferior social status and unjust living conditions. It became the mission of the Communist state to cleanse religion from society. The social structures and habits connected with the Church, as well as public practices and regulations directly inspired by Christianity, had to be suppressed.

In the context of my argument, it is important to emphasize that the programmatic eradication of religion from public life involved an attentiveness to the symbolic world. In the states that became Communist, religious symbols had previously been endorsed and used by the government. Therefore, the only action that a Communist state could undertake to achieve its new political end was the removal of those symbols altogether. With important nuances in form and intensity, the Communist programs used a familiar method to achieve this aim: Church buildings were either destroyed, reassigned to secular use, or hidden behind new buildings, and streets, squares, even entire cities, which had Christian names were renamed (so, for example, St. Petersburg became Leningrad). But since public spaces cannot be deprived of symbols entirely, the Communist governments created new statues, names, and slogans to fill the void created by the eradication of Christian symbols and to promote their own philosophy.
This extended period of forced de-Christianization—which entailed social and physical persecution, as well as the eradication of religion from public life—has left a deep trauma in the consciences of those who now live under post-Communist regimes in Eastern Europe. There are solid reasons to believe that the first *Lautsi v. Italy* ruling, in which an international court attempted to force a state to suppress the traditional presence of religious symbols in schools, awoke painful memories for those who had recently experienced just that. It is not surprising, therefore, that the most determined supporters of the Italian government’s appeal to the ECHR were formerly Communist countries. The key factor that makes the first *Lautsi v. Italy* ruling similar (although much softer) to Communist policies is the fact that the Court claimed that it is the duty of the state to remove religious symbols not because the majority had democratically decided on such a course of action, but for the sake of a political ideology—secular pluralism.

I believe that a thorough reflection on the role of secularism in the future of Europe must take into account the political history of post-Communist countries, for whom their past provides a solid basis for their critical response to this trend. And this position must be taken very seriously, since more than a third of the current population of the member states of the Council of Europe is now living in these countries. It is undeniable that the Communist experience will remain engraved in the conscience of Eastern Europe for a long time to come, and it is thus to be expected that the reactions triggered by the first *Lautsi v. Italy* ruling are only the symptom of what will certainly prove to be a long-lasting disagreement concerning the place and role of secularism and Christianity in Europe’s destiny.

**Orthodox Countries**

Since Eastern European Orthodox countries are also post-Communist, it is difficult to distinguish and evaluate separately the respective weight of political and religious factors in their rejection of the Court’s decision. However, in the written statements from the traditionally Roman Catholic and Orthodox countries acting as third-party interveners, the defense of the Christian inheritance of Europe appears as a strong motive for their reaction. As we shall later see, religion and politics are deeply intertwined in Orthodox countries.
All the countries that contested the first ruling on *Lautsi v. Italy* are either Roman Catholic or Orthodox. Both insist on the value of a good and fruitful relation between the state and the church, the latter having a public and active role to play in the life of the nation. This common feature distinguishes them from postmodern Protestantism, which insists that religion is a private affair and therefore that public law should not be molded according to specifically Christian principles. Even so, the fact that the governments of traditional Orthodox countries represent two-thirds of the opposition to the Second Section Chamber’s decision needs further investigation. Orthodox countries have several political, historical, and theological aspects to their identity that account for their strong stand against the Court’s secularism.

Orthodox countries have not passed through the long historical process of the privatization of religion that took place in the West, which brought to the fore the principle of *laïcité* in the wake of Enlightenment and the French Revolution. Romania, Bulgaria, Serbia, and Greece (to name the most prominent) became independent nation states only during the nineteenth century, with the collapse of the Ottoman Empire. In the past their territories and important parts of their populations had been part of “Romania”—the Christian Roman Empire (which lasted from 382 to 1453) centered on Constantinople, the New Rome. In the Christian Roman Empire, the “Roman” identity was one and the same with the “Christian” identity. This Roman/Christian identity was preserved during the Ottoman rule through the *Rum millet* system, which established the Orthodox Patriarch of New Rome (which came to be known as Istanbul) as an *ethnarch* for all the Romans (i.e., the Christians) living in the Sultan’s empire. When the Ottoman Empire dwindled, new nation states on a Western model became independent and once more proclaimed traditional Christianity as their national religion, around which much of their respective national identity came to coalesce. The Church played a major role in the preservation of a continuous ethnic and religious identity defined against that of their Muslim rulers during centuries of Ottoman subjugation. When the Orthodox countries we know today became independent in the nineteenth century, the Orthodox Church played an important role in their reorganization as newly established states. This Orthodox national history, which antedates the coming of Communism in the twentieth century, plays again—since the fall of the Berlin Wall—a very important role in
the formation of the national identity of those countries. Russia was never part of the Roman Empire, but the successors of Saints Cyril and Methodius’s missions to Bulgaria from New Rome played a major role in the conversion of Russia to Christianity. After the fall of Constantinople, Russia often interpreted herself as the heir to the Christian Roman Empire and the guardian of Orthodox Christianity.40

I want to underscore four major differences between post-Communist Orthodox countries and Western countries, which help explain their strong rejection of the secular political model promoted by the ruling of the Chamber of the Second Section.

First, in the West, the public function of Christianity gradually declined over a long period, which was still not complete in the 1950s when Christian democrats (mostly Roman Catholics) began their project to unite the states of Europe.41 In contrast to this process, Communist revolutions represented a sudden and radical breach with the past, without gradual transition. Immediately, traditional monarchical Christian societies had to adjust to the new values and political principles of radical international socialism. When Communism collapsed, religion won back its social position in a context in which a clear separation between the state and the church, and the confinement of religion to the private sphere, were naturally felt to belong to the recent Communist past, which was viewed very negatively. Western observers may be misled by the solemn declarations of laïcité or separation of state and church in some constitutions of former Communist countries. The texts of these laws may very well have been inspired by Western standards, but in the minds of the majority of the populations, as well as politicians, a clear and well-established separation of state and church does not exist, and is not recognized in practice.

Secondly, after the fall of Communism, religion has found again a public voice, as well as social and even political influence. There is a public and social revival of Christianity in both Romania and Russia: In these countries, the whole society has once more become Christian. The fact of Christianity gaining importance and public influence on such a vast scale is unheard of for more than two centuries in the West, where there has been only a long decline of Christianity and no sign of a revival.

Thirdly, there is a strong relationship between Orthodox faith and national identity in most (if not all) Orthodox post-Communist countries. This goes back to the nineteenth century, when the Ottoman Empire was losing its power and the present nation states were being created. Each new
country established—not without religious debates and even schismatic situations with the Patriarchate of Constantinople—a national church. It is common in Orthodox countries that a citizen of that country would consider themselves an Orthodox Christian, even if they do not believe in God, and even if they are not baptized. Orthodoxy and national identity are deeply tied together.

The fourth point may certainly be the most surprising for someone from a Western point of view. In post-Communist countries, the institution of the Church is well respected. Anticlerical feelings, which are very common in the contemporary West, do not have any equivalent in mainstream public opinion in Eastern Europe. Orthodox parish priests are almost always married and there is often an organic relationship, especially in rural areas, between the laity and the clergy. Without a pope, Orthodoxy is not a centralized international institution. The authority of its hierarchy, now as always, entails the voluntary reception of that authority by the people. In Orthodox countries, it is not uncommon to find nonbelievers who are critical of aspects of Orthodoxy but who nonetheless respect the Church as an institution.

These four points, (1) no clear separation of state and church, (2) the contemporary revival of Christianity, (3) the strong relationship between religious and national identity, and (4) trust and respect for the Church as an institution, lead to an interpretation of democracy and human rights that differs from that in the secular West. The idea that democracy must be grounded in the traditions and will of a people understood as a whole, with its religious and cultural traditions, is resilient. The democratic principle according to which it is the privilege of the majority to define the national identity according to history is still extremely strong in Orthodox countries, which is why, when human rights tend to promote a secular political model, they are met with a very negative reaction.

In the West, equality, laïcité, pluralism, and other secular values are much more widespread and deeply rooted in popular opinion, with the result that a strong tie between a specific religion and the state is perceived as unjustly discriminatory against adherents to other religions or nonbelievers. Pluralism, as a political doctrine, dictates that religion has to remain a private affair and that neither government nor the legislature should base its decisions on religious principles. By contrast, in popular opinion in Orthodox countries, the idea that pluralism should be imposed politically and judicially, with the intention of avoiding discrimination and to
build a perfectly egalitarian balance between the diverse religions and worldviews, is rejected as a threat to national unity, which is grounded in a singular national history shaped by Orthodox faith.

Russia and the Symphonic Political Model

The political and religious history of each post-Communist Orthodox country is very different. The outline given above, which attempts to gather together the main features that explain the reaction of Orthodox countries during _Lautsi v. Italy_, only touches the surface of the various national contexts, and it is beyond the scope of this paper to investigate in more detail the differences between the individual countries. However, the exploration of at least one of them will give more weight to the whole argument.

Russia is a very interesting case. Russia is not a member of the European Union, but she is a member of the Council of Europe, and played a decisive role in _Lautsi v. Italy_. The demographic, economic, and political importance of Russia, as well as her independence from the European Union, gives her a unique position among post-Communist countries when it comes to issues related to Western secular policies and recent innovations in human rights. We must never forget that politics is always a *rapport de forces*. For example, in this regard, a country such as Romania, which depends economically on subventions from the European Union, cannot be expected to take a clear public stand against the dominant opinion of the European Union.

The evolution of Russia’s dominant political philosophy since the fall of Communism is extremely interesting. Already in 1990, the Soviet authorities created a law on “Freedom of Conscience and Religious Belief,” according to the Western liberal model, “which contains provisions against discrimination on religious grounds.” This was an important turn toward the Western model of freedom of religion. The dissolution of the USSR in December 1991 left Russia without any clear political trajectory. For a short period of time in the early 1990s, Russia sought political inspiration from the West, and so laws concerning religion were enacted during this period under Western influence: Freedom of religion was integrated in the new Russian Constitution of 1993, becoming a cornerstone principle of the Russian juridical system. However, enthusiasm for the Western political model did not last long. Sergey Filatov writes:
Pro-Western democratic and market euphoria, and the expectations of the quick and painless achievement of the newly understood “bright future,” were replaced by disillusionment and apathy. Numerous polls of those years showed that, prior to 1991, not less than two-thirds of the population thought that Russia should follow the Western example in everything, patterning Russia on its example. By 1992, the same overwhelming majority believed that Russia had its own way to follow. Russia was, in principle, a different civilization—and the West was no model for it.44

Since the mid-1990s, Russia has been seeking her own path, and recovering her own history, together with the role of Orthodoxy in her national identity. Russia resolutely turned to her pre-revolutionary past for inspiration, reviving the traditional Orthodox idea that the state and the church should collaborate.45 The Moscow Patriarchate took an active role in this turn by promoting the idea of a particular bond between Orthodox religion and Russian identity. This resulted in the enforcement of a new series of laws, at the regional as well as at the national level, which introduced a distinction between different kinds of religions. The new Federal Law of 1997 demarcates established religions and “groups” which cannot obtain legal recognition.46 The special role of Orthodoxy is mentioned in the preamble to the law.

On the one hand, it can be stated with Filatov that “the revival of religiosity in post-Soviet Russia is a unique phenomenon in the history of Christian civilization,”47 and on the other hand, polls show that the population is still largely irreligious. The proportion of those who say they are believers in Russia is comparable with secular Western countries. The main difference, though, is that this proportion is increasing in Russia, whereas it is decreasing in Western Europe.48 There is no doubt that Russia is being re-Christianized, even if the process has not yet deeply touched the population.

Davis states that, at the political level, post-Soviet Christianity in Russia may be characterized by two major movements: First, conservative patriots see Russian religion as a unique tradition to be defended against reforms; and second, democrats see religion as one element in a plurality of institutions contributing to the building of civil society. Both are represented in the post-Soviet development of Christianity and its representa-
tion in the media. This tension and contradiction between these groups is noted by Marat Shterin:

One basic tension stemmed from the perceived contradiction between the 1990 Law’s thrust to treat all religions equally on the one hand, and the claims of historic faiths to recognition of their specific role for particular national or ethnic groups on the other. Undoubtedly, there was a revival of ethno-religious links after the decades of forcible disassociation between religion and ethnicity. As part of this process, past history became the most prominent reference point in what can [be] described as a struggle for legitimacy.

This restoration of Russia’s glorious past involves a specific idea about Russian identity as fundamentally different from Western Europe. Patriarch Kirill introduced in the late 1990s the phrase “Russian civilization,” understood as unique because it is grounded in the Orthodox faith, that sets Russia apart from Western Europe, which is essentially Protestant and Roman Catholic.

This “turning to the past” in an attempt to find a political path distinct from those of Communism and Western liberal, secular, and individualistic democracy has even reached further than Russia’s own past. In the media, as well as in political debates, the question as to whether the Christian Roman Empire must be used as a source of inspiration for political thinking has become significant. Over the course of more than a millennium, the Roman Empire developed a Christian political philosophy, which may be expressed by the Greek word *symphonia*, which means “harmony.” It refers to a political philosophy that, according to the word of Christ, distinguishes the power of the state and the power of the church, and, at the same time, strongly affirms that the two powers must collaborate for the good of the people, each of them exercising its limited authority. *Symphonia* is the predominant traditional Orthodox model for Christian political philosophy. In the *Bases of the Social Concept of the Russian Orthodox Church*, the Synod of the Russian Orthodox Church speaks highly of *symphonia* as a political model, quoting from the *Sixth Novella* of Emperor Saint Justinian I:

The greatest blessings granted to human beings by God’s ultimate grace are priesthood and kingdom, the former (priesthood, church authority) taking care of divine affairs, while the latter (kingdom,
government) guiding and taking care of human affairs, and both, come from the same source, embellishing human life. Therefore, nothing lies so heavy on the hearts of kings as the honour of priests, who on their part serve them, praying continuously for them to God. And if the priesthood is well ordered in everything and is pleasing to God, then there will be full harmony between them in every thing that serves the good and benefit of the human race. Therefore, we exert the greatest possible effort to guard the true dogmas of God and the honour of the priesthood, hoping to receive through it great blessings from God and to hold fast to the ones which we have.

Orthodox tradition features several Christian Roman Emperors as models, having canonized them as saints. Holy rulers of the Roman Empire are discussed in the media in Russia. There is no agreement about the symphonia model, but the very fact that it is seriously discussed shows how far Russia is from the model of Western liberal democracy: “The pattern of religious news coverage in broadcasting as a whole is therefore based on a strong inclination toward the Russian Orthodox Church and the expectation that Church policies will feature as a regular aspect of most major political, social, and cultural questions.”

Tsar Nicolas II, murdered by the Communists, was officially canonized in Russia in 2000 as a martyr for the faith, reconnecting political thinking to the traditional idea of “Holy Russia.” Another prominent example of the collaboration of the state and the Church concerns the rebuilding of the monumental Cathedral of Christ the Savior in Moscow, which had been destroyed by Stalin. It was recently reconstructed essentially with state finances and was presented as a symbol of a new era in national life.

To conclude this short exposition of some current political developments in Russia, the main fact that needs to be underscored is that there is a return of Christian tradition as a framework for political thinking in Russia.

Conclusions

This essay has explored the historical, political, and religious differences that set apart post-Communist Orthodox countries from other nations in Europe. The recent experience of radical secularization under Communism
explains why Church and political authorities in formerly Communist states have begun to contest the secular interpretation of human rights that is so widespread in Western Europe. Their religious tradition is perceived by the majority of the local population as a self-evident foundation of national identity, and so the idea that the state should surrender its national identity (by promoting secularism) in order to respect individual human rights simply does not make sense. The creation of European unity around secular values (therefore excluding Christianity as of primary significance) has been challenged by several post-Communist Roman Catholic and Orthodox countries. They reject the idea that laïcité should be imposed on all European countries by an international court and they refuse to interpret pluralism as requiring strategies that disregard their own religious culture and traditional values.

The ECHR case of Lautsi v. Italy has brought to the fore the fact that Eastern Europe is not uncritical of Western European progress toward a fully secularized society. There are strong signs of a revival of Christianity in several countries in Eastern Europe including Russia, which is the most powerful actor in Eastern European politics. Russia seems willing to abandon altogether the idea of European unity in order to pursue the restoration of a glorious Russian civilization founded on Orthodoxy, and thus markedly differentiated from the Western political construction, which is based on individual human rights, prescriptive pluralism, and equality. Such an idea has been fully endorsed and outlined by the present patriarch of Moscow. If traditional Christianity continues to reinforce itself in Russia and other Orthodox and Roman Catholic post-Communist countries in the future, and at the same time Western Europe continues on its trajectory toward a more thoroughly secularized society, the fracture of Europe, brought to light by Lautsi v. Italy, will no doubt become a more forceful reality in European politics in the years to come.

Notes

1. Laicità in Italian. There is no exact equivalent for this term in English; it is perhaps best translated as “secularism.” However, in Italian laicità and secolarismo have different nuances: Laicità refers specifically to the political and juridical principle of the separation of state and church, and is thus narrower in scope than secolarismo, which is a sociological and ideological term. In other words, laicità refers to a standing legal principle by which the state is bound,
whereas secolarismo is descriptive of an ideology and only theoretically prescriptive. In Europe, juridical literature in English uses the French laïcité (equivalent to the Italian laicità) to express the political and legal norm according to which the state should neither interfere in religious affairs nor be defined or influenced by religion. In this article, I will use the term laïcité in the English legal sense when speaking of the political norm apart from the social phenomenon of secularism. It is in fact the very term laïcité that stands at the center of the juridical debate pertaining to Lautsi v. Italy.

2. The principle of laïcité is not written into the Italian Constitution. However, it has received progressive recognition over a lengthy period as part of the Italian jurisprudence.


4. The European Court of Human Rights (ECHR) has its seat in Strasbourg and protects rights as set out in the European Convention on Human Rights. The ECHR is affiliated to the Council of Europe, which is constituted of forty-seven member states, representing approximately 800 million people. The Council of Europe must be distinguished from the European Union, a more recent and slightly different endeavor, which is constituted of only twenty-eight member states accounting for approximately 500 million people, and with its seat in Brussels. All member states of the European Union are also members of the Council of Europe.

5. A Chamber is a body of seven judges that represents the ECHR at a first hearing of a case. The ECHR is organized into different Sections, each having responsibility for different kinds of cases. The case Lautsi v. Italy was first heard by the Chamber of the Second Section. The Grand Chamber, composed of seventeen judges, gives final rulings on appeal cases. The Chamber and the Grand Chamber are often simply called “the court,” since in both operations they represent the ECHR.

6. ECHR (Second Section), Lautsi v. Italy, 2009, §47e.

7. The core argumentation of the court can be found in ECHR (Second Section), Lautsi v. Italy, 2009, §§48–58.

8. ECHR (Second Section), Lautsi v. Italy, 3 November 2009, §47e.

10. See, for example, the declaration of Kirill, patriarch of Moscow, available on Interfax: http://www.interfax-religion.com/?act=news&div=6675 (accessed 17 July 2014).

11. The Grand Chamber is the final court of appeal in the European Court of Human Rights, and its rulings cannot be overturned. See note 5 above for more details concerning the organization of the ECHR.


13. The status of “third-party intervener” (amicus curiae) is usually used to allow NGOs, which are not directly involved in a case (either as plaintiff or as accused), to intervene officially in the written and oral proceedings.

14. Professor Weiler, an Orthodox Jew, was formerly the Joseph Straus Professor of Law and the European Union Jean Monnet Chaired Professor at New York University School of Law. Since 2013 he has been president of the European University Institute, Florence, Italy. A video of his defense in the Lautsi and Others v. Italy case can be viewed on YouTube at www.youtube.com/watch?v=ioylyxM-gnM (accessed 17 July 2014).

15. “A Summary of the Submissions of the Intervening States,” prepared by the European Center for Law and Justice, can be found at http://eclj.org/pdf/ECLJ-Summary-LAUTSI-20110315.pdf (accessed 17 July 2014). The full written submissions of the states are neither published in print nor available on the internet (as far as the author is aware); they are accessible in the archives of the ECHR.


17. Armenia, Bulgaria, Romania, and Russia became third-party interveners in the Lautsi and Others v. Italy proceedings, so their involvement was more direct that that of Macedonia, Moldova, Serbia, and Ukraine, which made public declarations but did not take part in the juridical proceedings before the ECHR. A distinction between the two subcategories of official participants in the legal proceedings and unofficial commentators is present in each of the following groups also.

18. The exception is Belarus, which has not yet been accepted into the Council of Europe.

19. With the exception of Greece, which was the only Orthodox country in Europe that did not become Communist.
20. The post-Communist countries that opposed the ruling of the Chamber of the Second Section represent 37 percent of the population of the countries that make up the Council of Europe (approximately 293 million people).

21. Russia is the clearest example (as will be elucidated below), but there are other countries that have recently taken political courses alien to Western secular politics—for example Hungary, which has just established a new constitution that gives an important place to traditional Christian principles.


23. See § 61 and § 68–70 of the ruling of the Grand Chamber.

24. ECHR, Lautsi and Others v. Italy, § 78.

25. ECHR, Lautsi and Others v. Italy, § 57–81.

26. In fact, it has been argued with good reason that the very fact that twenty-one countries contested the first ruling had already diminished the authority of the ECHR.

27. ECHR, Lautsi and Others v. Italy, § 60: The court mentions the Folgerø Case, which is interpreted as imposing a “duty of neutrality and impartiality” on contracting states.


31. See A. J. Menéndez, “A Christian or a Laïc Europe? Christian Values and European Identity,” in Ratio Juris. 18, no. 2 (June 2005): 179–205. (“Laïc” should read “Laïque,” since “Europe” requires the feminine adjectival form in French.) Secularists no longer consider the possibility of building European unity on Christian values, an idea that was still widespread in the 1950s.

32. This is clear in the argument of the Italian Republic found in Lautsi c. Italie, Saisine de la Grande Chambre.

33. See “ECHR Crucifix Case” (note 19 above).

34. With the exception of Albania, which became Communist at a time when Islam, Catholicism, and Orthodoxy were all well-established religions.
35. This process of privatization achieved momentum in the eighteenth century in Western Europe. It progressed very unevenly in different national contexts. Yet, there is now a clear movement toward secularization, which came to full fruition only in the late twentieth century, especially through the European Union and also, to a lesser extent, the influence of the ECHR.

36. Also known in Western scholarship by the pagan name of “Byzantium.” This ancient name also gave itself to the expression “the Byzantine Empire,” coined in the sixteenth century in French by Hieronymus Wolff. Both in Latin and Greek, the name of the Christian Empire was either “the Roman Empire” or “Romania.” “Eastern Roman Empire” is also a modern historiographical term, used to distinguish the eastern Christian territories from the later western kingdoms.

37. Indeed, the word “Romans” was used to refer to “Christians,” while “Greeks” was used to refer to the few remaining “pagans.”

38. This Ottoman system gave the patriarch the highest political authority and responsibility over the Romans (i.e., those belonging to the Orthodox Church).

39. In Greece, the church also played a major role in the Roman Revolution of 1821 (the “Greek War of Independence”), which later was interpreted—under the influence of Great Britain and France, which took an active and decisive role in the revolution—as a Greek revolution against their Ottoman rulers.

40. This feeling was very strong in the nineteenth century, especially in the Slavophile movement (Khomiakov, Dostoevsky, etc.), which thought that Russia had a role to play as the redeemer of Europe, perceived as Western and profoundly alien. The feeling that the Russian Empire was the legitimate heir to the Christian Roman Empire led Moscow to proclaim herself as the “Third Rome” (a title still used today by traditional Orthodox).

41. There were, of course, violent and radical episodes. The most important was the French Revolution, which not only murdered, exiled, or imprisoned anti-Republican priests and annihilated whole populations in the monarchist and pro–Roman Catholic region of Vendée, but also abolished the Judeo-Christian week of seven days and changed the calendar in order to lay the foundation for a new society, free of the Judeo-Christian tradition.


43. Davis, “Mediating Religion,” 71: “The law was liberal and popular and the freedoms were endorsed in the 1993 Russian Constitution. Its guarantees of freedom of worship for all faiths, including foreign religious associations,
encouraged a boom in religious activity ranging from evangelism, pilgrimage, religious education, new religious movements and the resurgence of indigenous religious practices.”


45. This collaboration of the state and the church has progressively become more important since the first election of Vladimir Putin as president in 2000.

46. See Davis, “Mediating Religion,” 72. Many, if not most, legal systems in Western Europe have similar distinctions even today. The striking aspect of this new law is that it moves away from equality between religions toward a system that grants privileges to only some religions on the basis of history, demographic importance, etc. This reversal in the prevailing trend is highly significant in reflection on the fate of secularism in Europe.

47. Filatov, “Orthodoxy in Russia,” 188.

48. World Values Survey research in Russia, based on surveys at various intervals in the 1990s and 2000s, shows that:(1) a minority in Russia practice religion on a regular basis; (2) the proportion of Russians who believe in God and identify with Orthodoxy is growing. The data can be found on the official website at: http://www.worldvaluessurvey.org (accessed 17 July 2014).


51. Filatov, “Orthodoxy in Russia,” 190: “The continuous strengthening of the Orthodox Church in Russia is first of all its strengthening as an ideological, cultural and political force expressing society’s mood of restoration.”

52. Filatov, “Orthodoxy in Russia,” 191: “The term ‘Russian civilization,’ introduced into ecclesiastical vocabulary in the late 1990s by Metropolitan Cyrill (Gundyaev), has acquired a sacral, quasireligious meaning in church circles.”


54. The Sixth Novella of Saint Justinian is quoted here as found in the English translation in the Bases of the Social Concept of the Church (see note 53 above). The Synod of the Russian Orthodox Church endorses this Novella as a traditional reference, but noting that this ideal was never realized in its purity in the Christian Roman Empire. The whole presentation on the different
political models and their respective merits can be found in the *Bases of the Social Concept of the Church* § III.4.

55. Important examples of canonized Roman Emperors are Saint Constantine I the Great (272–337), Saint Theodosius I the Great (347–395), Saint Justinian I (482–565), and Saint Basil II (958–1025).
57. See Davis “Mediating Religion,” 76–78.