

# Freedom of Religion, Public Good, Christian Culture

## Perspectives for Finding New (Old) Foundations

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### I Introduction

Freedom of religion and religious tolerance occupy a special place in the Hungarian public law tradition and as such Hungary (and especially Transylvania) has a unique historical experience of how to ensure the peaceful coexistence of different denominations and of how external threats can promote the internal peace of a society. While in comparison to the previous meaning of freedom of religion, its present content has become much richer, two fundamental aspects remain the same: For the sovereign state, the believer constitutes a challenge, as his loyalty to the state is ultimately preceded by his loyalty to God. At the same time, the believer can also enrich the good of the community with a new quality; the community of believers creates a culture, and this culture underpins the existence of the whole of society. Freedom of religion requires a deeper reflection: What are the roots of this freedom and what fruits does it bear?

### II Reservations on the freedom of religion

Pope Gregory XVI stated in his encyclical *Mirari vos*, dated 15 August 1832, that: ‘This shameful font of indifferentism gives rise to that absurd and erroneous proposition which claims that liberty of conscience must be maintained for everyone.’<sup>1</sup> Compared to this position, the Catholic Church had undoubtedly come a long way by the time of the Second Vatican Council (1962–1965), when it made the solemn declaration, *Dignitatis humanae* on freedom of religion.<sup>2</sup>

<sup>1</sup> Pope Gregory XVI, *Mirari vos*, para 14.

<sup>2</sup> László Gájer, *XIII. Leó pápa megnyilatkozásainak filozófiatörténeti előzményei (különös tekintettel a vallásszabadságra* [PhD dissertation] (Budapest: Pázmány Péter Katolikus Egyetem Hittudományi Kar, 2013).

The Church, which considers itself the custodian of objective truth, for a long time rejected the idea of freedom for fear of infidelity to the Truth: Error cannot have rights.<sup>3</sup> Obviously, historical circumstances also played a role in the Church's reluctance to embrace the concept of human rights. The idea of human rights emerged in the context of the natural law approach and the theory of the social contract, and subsequently the first human rights charters were formulated during the anti-clerical Enlightenment. Although there was a transition between natural law and the Christian conception of law, proponents of human rights did not start from the Christian image of man and revelation but from their own socio-philosophical assumptions. Religion-based legal systems are by no means characterised by a category of human rights but instead take duties as their starting point, whereas 'rights' are held by God. Thus, the neighbour cannot enforce his 'right' to love – which does not change the commandment of love while the Ten Commandments approach property from the prohibition of theft rather than from the point of view of legal protection.<sup>4</sup>

### III The route to *Dignitatis humanae*

The last document issued by the Second Vatican Council is a solemn declaration on the freedom of religion, beginning with the phrase '*Dignitatis humanae*'. This was probably the most controversial document drawn up by the Council,<sup>5</sup> which itself travelled along the long road from tolerance to freedom.<sup>6</sup> With this step, the Council, while not without precedent, undeniably took a decisive step, with far-reaching consequences for the Church and the world. According to the American Jesuit theologian John C Murray, who played a major role in the drafting of the statement, the initial thesis, confirmed during the papacies of Leo XIII and Pius XII,<sup>7</sup> was the institutionalisation of Catholicism as a state religion, which does not allow the public existence of other religions (since error cannot have rights). Murray calls tolerance a hypothesis which the Catholic state could

<sup>3</sup> Josef Königsmann, "Vollkommene Gesellschaft" oder "Religionsfreiheit" als Zentralbegriff einer Lehre über das Verhältnis von Kirche und Staat', *Österreichisches Archiv für Kirchenrecht* 19 (1968), 232, 245.

<sup>4</sup> Louis Henkin, *The Age of Rights* (New York: Columbia University Press, 1990), 184.

<sup>5</sup> István Seregély, 'Nyilatkozat a vallásszabadságról: "Dignitatis humanae"', in József Cserháti and Árpád Fábrián (eds), *A II. Vatikáni Zsinat tanítása* (Budapest: Szent István Társulat, 1975), 367.

<sup>6</sup> Roland Minnerath, *Le droit de l'Église à la liberté. Du syllabus à Vatican II* (Paris: Beauchesne, 1982), 124–126.

<sup>7</sup> John C Murray, 'Leo XIII and Pius XII: Government and the Order of Religion', in Leon J Hooper (ed.), *Religious Liberty. Catholic Struggles with Pluralism* (Louisville, KY: Westminster John Knox, 1993), 49–125.

exceptionally choose as the lesser evil.<sup>8</sup> *Dignitatis humanae*, going beyond the practice established since the Reformation, set a new conceptual foundation for thinking about society and the state, as was expressed in 1963 in the encyclical of Pope John XXIII, beginning with '*Pacem in terris*': The principles of truth, justice, love and freedom – meaning that freedom of religion was accepted by the Church because of a truth rather than for practical reasons – for the truth of the dignity of the human person.<sup>9</sup>

*Dignitatis humanae* starts from the dignity of the person, as opposed to ecclesiastical public law (*ius publicum ecclesiasticum*) with its traditional questioning, the main issue of which was the discussion of the relationship between the institutions and the *apologia* for the original and full power of the church and the state in their own territory. Of course, the statement does not stop at the level of the individual but also involves the rights of religious communities. Freedom of religion is not the same as freedom of the Church:<sup>10</sup> Freedom of the Church (*libertas Ecclesiae*) does not only follow from the freedom of religion but also from its very existence.<sup>11</sup> The essence of the state's previous preference for denominational commitment was for the state to recognise the interpretation of divine law according to the Teaching Office of the Church. After the solemn recognition of the principle of freedom of religion, the religious commitment of people can become meaningful through the commitment of Christian citizens to the democratic process, rather than through solemn state declarations. Along with the recognition of the freedom of religion, the Church indicates its preference for the rule of law and also accepts the secular nature of the state,<sup>12</sup> in that it does not require the state to make an institutional commitment to the Catholic Church. Acceptance of the secular nature of the state is, of course, not acceptance of secularism in the sense in which it appeared (especially in turn-of-the-century France) as an anti-clerical intellectual and political programme.

By recognising freedom of religion, therefore, the Church does not acknowledge error as true but confirms and protects the dignity of the erring human person, in the belief that the best human decision on the matter of their worldview should be made in a manner consistent with human dignity, that is, freely. Putting the dignity of the person first does not shift the boundaries between the Church and the state or the Church and society, and it also makes it clear that the Church does not start from an individualistic conception of human rights – on

<sup>8</sup> John C Murray, 'Religious Freedom', in John C Murray (ed.), *Freedom and Man* (New York: PJ Kenedy and Sons, 1965), 134.

<sup>9</sup> John C Murray, 'The Declaration on Religious Freedom', in Leon J Hooper (ed.), *Bridging the Sacred and the Secular. Selected Writings of John Courtney Murray, SJ* (Washington, DC: Georgetown University Press, 1994), 198.

<sup>10</sup> Second Vatican Council, *Dignitatis humanae* (1965), 4.13.

<sup>11</sup> Lorenzo Spinelli, *Libertas Ecclesiae. Directorate of Directed Education* (Milano: Giuffrè, 1979), 194.

<sup>12</sup> Minnerath, *Le droit de l'Église*, 137 and 141.

the contrary, it derives from the human right to freedom of religion and the community right to freedom of religion. Churches are composed of followers of the same beliefs, so obviously no one has the right to be or remain a member of a particular religious community that follows other beliefs. The autonomy of religious communities also extends to determining who is considered a member and what rights and obligations this membership entails – up to the limit of breaking the law. Thus, as Péter Erdő states, freedom of religion cannot be interpreted within the church.<sup>13</sup> The Church recognised, in the light of the gospel, that God does not force anyone to believe, so freedom of religion rests on the recognition of a person's ontological dignity and does not signify the recognition of religious indifference. Today, it has become increasingly clear that there is no place for coercion in our relationship with God – and the state must respect that freedom. The past fifty years or more have brought about decisive changes to the world. Religious diversity has intensified in much of the world, not least as a result of migration. The rise of extremism is also a new challenge facing many societies. While Western societies first made religion a private matter and then many moved away from the faith, today the question of the social role of religion has arisen with renewed vigour.

#### IV Freedom of religion is the foundation of human rights

Freedom of religion, as part of man's natural freedom, forms part of the public good, as pointed out by the Second Vatican Council among others.<sup>14</sup> Man, according to his nature, achieves self-awareness and experiences freedom within the framework of a community – the family and the nation. Community is essential to humanity, while the growth of one person's humanity also benefits other people. Religions and non-religious value systems that give meaning to human life can prevail in this space in the community or in society. The role of the state in this regard is to provide spaces of freedom – this is what Pope Benedict XVI called the state's 'positive laity'.<sup>15</sup> The state should provide the space where answers to the most important existential questions can be formulated. It may also be interpreted by this that the state must also recognise the contribution of the Church to the common good, for example in the field of education. If it does not act in this way then it will become weaker.

Man's life cannot be meaningless, which is why every human being has an inviolable and indelible dignity as part of humanity. The Christian man lives in the knowledge that every man is a child of one Father. The Western world turned

<sup>13</sup> Péter Erdő, *Az egyházjog teológiája* (Budapest: Szent István Társulat, 1995), 190.

<sup>14</sup> Second Vatican Council, *Gaudium et spes*, 1965, 6.

<sup>15</sup> Thus, welcoming President Nicolas Sarkozy on his visit to France: <https://bit.ly/2PG230f>

away from religion, first to the world of philosophy and then to the world of science and technology, expecting them, also with a kind of religious faith, to answer questions about the future of mankind and, by the nature of what it encounters, to determine the limits of these answers. Meanwhile, the role of the state has also been transformed. The democratic state is unquestionably an achievement of our civilisation, but it is increasingly narrowing its perspective to formal, procedural issues: Instead of meeting the basic needs of man; we expect only the observance of formal rules to ensure social coexistence. When initiatives for cultural citizenship or positive discrimination to protect minorities arise, not only is the principle of formal equality violated, but new questions arise about the exercise of freedom of religion.<sup>16</sup> Pope Saint John Paul II also affirmed that religious freedom is the foundation of all other freedoms, an indispensable element of human dignity.<sup>17</sup> Pope Francis has powerfully highlighted the fact that humanity is going through a sea-change.<sup>18</sup> We need both to rethink many issues and to be conscious of issues that have long been taken for granted.

## V 'Freedom of religion for the benefit of all'

An important, comprehensive document on the recurring reflections on freedom of religion is the 2019 paper of the International Theological Commission, 'Religious freedom for the good of all'. The International Theological Commission was established in 1969 by Pope Saint Paul VI to assist the Congregation for the Doctrine of the Faith in its work, by carefully examining major religious issues.<sup>19</sup> The Commission is made up of representatives from various schools of theology from around the world, who excel in their theological activities and are committed to the Teaching Office of the Church. The members, up to a maximum of thirty, are appointed by the Holy Father for five-year terms, on the proposal of the Cardinal Prefect of the Congregation for the Doctrine of the Faith, who consults with the relevant episcopal conferences prior to his decision. In its fifty years of existence, the Commission has issued twenty-nine documents.

The International Theological Commission's document on religious freedom, issued in 2019, sheds new light on the freedom of religion, not only from the perspective of the public good: It serves not only the public good, but the benefit of all. It considers the questions: How does another person's freedom serve mine? How do other people's search for God and lived faith benefit the community? Reflection

<sup>16</sup> Interview with Javier Prades, head of the working committee, in the periodical *Tracce* 44, no 7 (2019), 12–18.

<sup>17</sup> Pope John Paul II, *Redemptoris missio*, 1990, 286–287.

<sup>18</sup> Pope Francis, *Laudato si'*, 2015, 19 and 102.

<sup>19</sup> Notice of Establishment of the International Theological Commission.

makes it clear that faith is not a private matter. It also draws attention to the fact that the misunderstood neutrality of the state can become an obstacle to an individual being able to live his faith and enjoy his citizenship to the full as a citizen of the community, thus making the community poorer.

Freedom of religion, as the first fundamental right, occupies a prominent place among human rights. *Dignitatis humanae* makes it clear that the basis of inviolable human rights is human personality. Human dignity is an innate part of the human nature of every human being. By defending freedom of faith, the Church testifies to all human beings that if freedom grows with truth then truth needs freedom to flourish. Referring to God as the transcendent foundation of the moral order in the heart of all men also limits human abuses: If God's place is replaced by man-made idols, or merely by the commonality of the people, experience has shown that the result is not greater freedom, but servitude.

The Old Testament revelation also makes it clear that a covenant with God takes precedence over all other authority – without doubting that secular power, in its own realm, can establish a kind of order. The kingdom of God, the coming of which was proclaimed by Jesus Christ, is not of this world (John 18:36). Saint Augustine of Hippo also makes it clear that the activity of secular power in the service of the common good is legitimate, but cautions that this power cannot extend its competence to religious matters; it cannot become a substitute for religion.<sup>20</sup> The distinction between secular and spiritual power has been a recurring issue from antiquity to modern times. The kingdom of God is evolving within the earthly kingdom: The two worlds live together, and it is appropriate for the church to give consideration to both for the promotion of the common good. Both the deification of the state and state-spread atheism are clearly wrong, by this logic.

A remarkable insight of *Dignitatis humanae* is that the supposed religious neutrality of the liberal state, which selectively excludes religious experience from public affairs, falsely transcends the new, occult ideology of power. In other words, the sovereign state, which sees itself as the ultimate reference, sets itself up as God. Referring to Pope Francis, the document emphasises that while the secularist view of religion is that it constitutes part of a subculture, it is in fact a divine gift that is a sure foundation for all other manifestations of freedom and is the decisive contribution to human brotherhood.<sup>21</sup> A more beautiful future can only be built where there is an intention to live together – otherwise the future does not promise much good to anyone. The religious spirit sees a relationship with God as part of humanity, and believes that such a relationship can become a blessing for others. The many religions that live together in a society must recognise the consequences

<sup>20</sup> Saint Augustine, *The City of God*, ch. XIX, s 17.

<sup>21</sup> Second Vatican Council, *Dignitatis humanae*, 1965, 17.

of the meaning and dignity of the human person, which is the basis of interreligious peace, with all its legal and political consequences.

It is precisely in connection with the most important issues of human life that the various religions enrich the whole community with their specific spiritual traditions. The liberal approach restricts the freedom of religion, as the morally neutral state itself strives for ethical authority, controlling all human judgement. Such a state goes beyond just ensuring the equality of citizens before the law, becoming absolutist and relativistic at the same time. With the exclusion of God, the transcendent basis of the collective moral conviction of the people ceases to exist, and man-made idols, namely the occult ideology of power, takes its place. The result is not the fulfilment of human freedom but, on the contrary, a new form of servitude. Such a state, which is ostensibly neutral, is not really neutral at all: This is not the attitude that Pope Benedict XVI called 'positive neutrality'. Such a state is not open to the contribution that Christians can make to answering ethical questions facing society, and is also reluctant to cooperate with religious communities. True freedom of religion contributes to the development of coexistence and social peace. Social coexistence has value for both the individual and society – which is what those involved need to wish for. Religious communities, if given the opportunity, can effectively promote this coexistence, provided, of course, that they all recognise fundamental human rights, including the rights of minorities. Ultimately, freedom of conscience is not indispensable: The individual, especially if the legal system of the state is detached from natural morality, must have the freedom to choose God over the legal norm.

## VI Christian culture

'In Europe, the atheist is also a Christian' – this saying, attributed to József Antall, may have been true in a cultural sense for several generations of atheists: Atheists defined themselves by their opposition to Christianity; atheism was a denial of the Christian faith. According to Pope John Paul II:

There can be no doubt that the Christian faith is a defining and inevitable part of the foundations of European culture. This is because Christianity has given shape to Europe, instilling some fundamental values. Modern Europe, which has endowed the world with democratic ideas and human rights, draws its special values from its Christian heritage. Europe is not so much a geographical place as a cultural and historical concept, meaning a real continent that has been able to unite different peoples and cultures thanks to the unifying power of Christianity.<sup>22</sup>

<sup>22</sup> John Paul II, 'Ecclesia in Europe', in *II. János Pál megnyilatkozásai* (Budapest: Szent István Társulat, 2005), 108.



However, seeing the process of secularisation (even the self-secularisation of churches)<sup>23</sup> in the countries of the Western world, there seems to be a new non-religious generation, for whom Christian words no longer hold any meaning.

Christmas is a holiday for almost every family, which seems to indicate the universal validity of Christian heritage. However, for many, their relationship with the Celebrated means nothing more than the person of Emperor Augustus does for the month that bears his name: Just as the use of Latinate month names does not make one Latin, neither does the Christmas tree make one a Christian. Christianity achieved its most historically influential cultural and intellectual image in Europe.<sup>24</sup> Both Christian culture and the culture of scientific rationalism, which also developed in Europe and excluded God from public thought, define Europe today, but Christians are no longer in tune with modern culture, as Pope Benedict XVI concluded: 'We live in a positivist and agnostic culture that is overwhelmingly impatient with Christianity. Therefore, Western society, at least in Europe, will not be a Christian society.'<sup>25</sup>

With its call for the protection of the Christian culture of Hungary, inserted in Article R)(4) by the Seventh Amendment of the Fundamental Law, the constitutional intention is that Christianity, or more precisely the Christian culture of Hungary, should appear not only as an element of the past requiring recognition but also as a value to be protected today. By its very nature, Christianity is a universal religion that has sought inculturation from the beginning (sometimes with varying degrees of success). The Fundamental Law does not provide for the protection of Christianity, a reality that has been enculturated in a certain way, but for the protection of a cultural reality. There are many historical examples of the faith that transforms the individual and permeates society like a leaven. However, the object of this constitutional protection is not the Christian faith, but the culture it has created, including the freedom to deny it. The Christian faith itself could hardly be given constitutional protection (the law does not protect against temptations, for example); at most, it could remind the holders of public power of their special responsibility – as the concluding sentence of the Fundamental Law puts it, responsibility cannot be limited to a one-off vote, however important, but embraces the whole of life.

The word defence conceptually presupposes a threat. The justification of the proposal to amend the Fundamental Law justified the addition with reference to the unnamed processes currently taking place in Europe, declaring the intention to preserve the cultural image of Europe and Hungary.<sup>26</sup> Neither the new element

<sup>23</sup> The concept developed in German theology was also used by Pope Benedict XVI, *Address of His Holiness Benedict XVI to the Bishops of the Episcopal Conference of Brazil*.

<sup>24</sup> Joseph Ratzinger, *Benedek Európa a kultúra válságában* (Budapest: Szent István Társulat, 2005), 32.

<sup>25</sup> Benedict XVI, *Utolsó beszélgetések Peter Seewalddal* (Budapest: Szent István Társulat, 2016), 261.

<sup>26</sup> Summary amendment proposal of the legislative committee of the Parliament: [www.parlament.hu/irom41/00332/00332-0011.pdf](http://www.parlament.hu/irom41/00332/00332-0011.pdf).



of Article R), nor the explanatory memorandum to its proposal stipulates that the changing composition of the population as a result of migratory processes, or secularisation, social deprivation or possibly other factors, may lead to a change in the continent's cultural image, which should be opposed, and it leaves a broad room for interpretation by this omission. A separate question is to what extent these processes can be influenced by constitutional law means: If societies with lengthy, strong commitments (perhaps Belgium, Ireland or Spain), which today often not only disrupt their Christian tradition but also their democratic legislation and have turned against natural law,<sup>27</sup> is it attributable to secularisation, the weakness of the church, or the negligence of the drafter of the constitution, or is it an uncontrollable natural process? These examples show that the will of the people can even disappear behind constitutional rules, and that the will of the overwhelming majority is followed by constitutional and legal provisions within a generation at most. In a concrete example, if the dominant majority of the population sees marriage as not only the union of a man and a woman, then sooner or later the legal system will also adapt to the new majority. It cannot be ignored that, with regard to issues such as the protection of life, the concept of marriage or even crucifixes in public buildings, the fault lines in Western Europe are not between Christians and Muslims but between religious traditions and secular forces.

The concept of culture is primarily the totality of material and spiritual values created by humanity, the manifestation of the culture of a community or a people. In an anthropological sense, culture is a way of life for a community.<sup>28</sup> Our culture can be threatened in many ways – the wording of the Fundamental Law is generalised, so it can send a confirmatory message to the preservers of cultural heritage, whether it is to protect the cityscape, nurture folk customs or emphasise the importance of teaching Latin. At the same time, it makes a comprehensive reference to the whole of the established Central European way of life, which includes the evaluation and protection of relationships and behavioural forms and virtues, from music education to dance schools. It would be impossible to give a truly comprehensive definition of the content of our culture that is to be protected. It would require a deeper clarification of whether this culture can actually be called Christian, or perhaps it would be more accurate to speak of a culture with Christian roots.

While the National Creed of the Hungarian Fundamental Law recognised the Christian heritage, Article R)(4), inserted in 2018, it orders the protection of Christian culture (noting that the assumption of a heritage includes not only the positives: Heritage can also have burdensome elements). This is not about acknowledging or protecting the Christian faith or the Christian religion, but about prescribing the protection of the culture that has developed on these roots. However,

<sup>27</sup> János Frivaldszky, *Jó kormányzás és a közjó. Politikai és jogfilozófiai szemszögből* (Budapest: Pázmány Press, 2016), 74.

<sup>28</sup> Ferenc Pusztai (ed.), *Magyar értelmező kéziszótár* (Budapest: Akadémiai, 2003), 774.

if a comprehensive approach is taken, Christian culture cannot be interpreted without the Christian faith: Culture sprouted from faith. Centuries of tradition and deep individual conviction permeate the works of Dante Alighieri or Johann S Bach and make the *Divine Comedy* or *St Matthew Passion* works of theology, which may be interpreted only in a truncated form if torn off their roots – without disputing the right of performers who do not share the faith of the creators to interpret the works of Bach, Georg F Händel or Zoltán Kodály. This reflection cannot be created by the will of the drafter of the constitution. Although the concept of Christian culture is much broader than the artistic expression of this culture, artistic expression and the fate of the works of art can be telling about our relationship with these roots, as when Sándor A Tóth's 1937 painting of Saint Elizabeth was put up for auction with the title *Art deco woman with flowers*.<sup>29</sup> On the one hand, one may feel that the recognition of artistic value is valid even without the recognition of the original meaning: The image not only appeals to the believing observer; on the other hand, it seems that something has been lost here.

A social practice incompatible with the Christian faith is precisely the protection of freedom rooted in Christianity. A significant part of the Hungarian society, including those who consider themselves Christians, do not follow many of the moral commands and traditions that stem from Christianity and the protection of Christian culture also protects this freedom. In contrast to religious-based legal systems (such as Islamic states), religious truth alone does not provide a basis for distinguishing between legal and illegal behaviour – we can only establish standards that are visible and reasonable to everyone. While in traditional, religious-based legal systems, the secular foundation of law may have seemed absurd, in a secular state, the criminalisation of murder or the regulation of economic crimes cannot be based by the legislature solely on the Ten Commandments.

Can we consider, even if it is against their will, the children of a Christian culture to be Christians?<sup>30</sup> In a cultural sense, this may be true: Today, in Hungary, name days are held regardless of denomination – and even non-Christians have adopted this custom. Many forms ask for the client's given name instead of their 'Christian name'. It is a question whether these customs, if emptied, are not precisely of concern to committed believers, but we would find it unfair for only Catholic children to be gifted by Santa Claus (we approach this custom not in veneration of the Bishop Saint Nicholas but from equal or more universal access to chocolate for children). At the same time, deciding what is compatible with the Christian faith is essentially a matter for ecclesial communities and authorities, as well as for the conscience of

<sup>29</sup> For details of the auction see [www.kieselbach.hu/alkotas/art-deco-no-viragokkal\\_-1937\\_17740](http://www.kieselbach.hu/alkotas/art-deco-no-viragokkal_-1937_17740).

<sup>30</sup> András Jakab, *Az új Alaptörvény keletkezése és gyakorlati következményei* (Budapest: HVG-Orac, 2011), 180. The concept of Christian Europe is a concept that is strongly present in Christian Democratic thinking. Cf. Erich Kussbach, *Keresztény Európa és európai integráció. Európa mint keresztény értékközösség* (Budapest: Hans Seidel Alapítvány, 1996), 9–32.

the individual while the Constitutional Court is the interpreter of the Fundamental Law. How can a commitment to Christian culture be interpreted?

Protecting Christian culture can mean a ban on miniskirts, but it can also mean the freedom to wear one. Which interpretation is correct? Can the constitutional provision be perceived as an objective of the state; that is, does it place an obligation on the state to direct the value choices of society towards the Christian faith? This could entail such varied measures as stronger protection of human life beginning with conception or of the marriage bond, or restrictions on work on Sundays, pornography, esotericism and nostalgia for pagan Hungarian prehistory and the repression of the giving of non-Christian first names, the banishment of blasphemy from the vocabulary of the members of the armed forces, actions against tattoos, drug use and gambling, strong solidarity with the downtrodden, or the enforcement of subsidiarity in the organisation of society and the economy. The challenges, where profound social and legal change would follow from the Christian faith and where there is certainly a gap between current social practice (certainly that of the majority of the electorate) and the Christian approach, could be listed at length. This chasm may even be unconscious, as a significant proportion of those who profess to be Catholic do not even know the teachings of their church. The aspirations of the Christian voter and politician for the tenets of his faith to appear in the legal system and in the politics of the state must be legitimate, but they must present arguments that are not theological but accessible to all and must be brought to the majority in the democratic decision-making process.

If we were to consider the protection of Christian culture as a state goal, we could expect the state to take clear action to bring the value choices of society into line with the Christian tradition, that is, to promote the birth and survival of a Christian culture. Thus, in addition to the aspects of legality and expediency, all state bodies should consider how a particular decision may be assessed from the point of view of Christian culture. The wording of the Fundamental Law suggests that the drafter of the constitution aims to protect current social practice rather than to recreate Christian culture – even in aspects where there is a gap between the Christian ideal and social practice. This is suggested by the fact that it prescribes the protection of a particular culture (the culture of Hungary) rather than the protection of the Christian culture, which could also include the notion that the culture of Hungary should be made Christian. The drafter of the constitution does not seem to have been driven by the intention to ban the miniskirt but to protect the freedom to wear it. If the culture of Europe – and thus of Hungary – is Christian,<sup>31</sup> the protection of cultural identity can only mean the protection of a Christian culture.

<sup>31</sup> Europe's identity is given by its Christian heritage; Joseph HH Weiler, *Un'Europa Cristiana: Un saggio esplorativo* (Milano: BUR Saggi, 2003); Miklós Király, 'Európa keresztény gyökerei és az alkotmányos szerződés', *Iustum Aequum Salutare* 2, no 3–4 (2006), 67–72; András Püskösty,

## VII The relationship between Christian culture and the Christian faith

The culture-creating role of faith is a historical experience.<sup>32</sup> A culture stemming from Christianity could only be organically defended in conjunction with Christianity.<sup>33</sup> The Fundamental Law and the state can only protect its results, what derived from Christianity, by ordering the protection of culture. Without living faith, the fruits of the faith of ancestors can last only for a while, perhaps for a generation or two. By ordering the protection of culture, the Fundamental Law does not protect the tree, the Christian faith, (it is not even suitable for this) but the fruits of the faith of previous generations. It is not up to the drafter of the constitution whether the tree lives – or in the end it will only be the skin, the appearance of the fruit, that we will protect even if it has been plucked from the tree. The Fundamental Law (and its National Creed) is a forward-looking, optimistic document. By defending Christian culture, it does not seek to board a train that has already arrived at its terminus.

A specific issue is whether, to protect the specific cultural reality, the state can take action against those who formulate a genuinely Christian point of view on an article of faith or on a moral basis. If we identify 'Christian culture' with the forms of behaviour that prevail today, it is precisely the representation of an authentic Christian position that, over and over again, may require a confrontation with the dominant culture; perhaps in its roots but not in its content.<sup>34</sup> Criticism of the existing Christian (origin) culture can easily result from Christian faith. Freedom of religion includes the right of individuals, religious communities or their leaders to take a stand on matters of religion or morality, and this is legitimate even if it challenges the existing cultural environment. The authenticity of the position, beliefs and moral views of believers should not be called into question by outsiders. It does not matter, however, whether that criticism is aimed at renewing or destroying Christian culture (at its roots). In both cases, freedom to criticise enjoys the protection of freedom of speech and thus of our Christian culture.

The role of the state in the preservation of the Christian heritage does not raise concerns precisely from the point where that heritage is organised as a culture. The relationship with tradition is by no means uniform, nor is the cultural identity of the political community homogeneous. Examples range from the symbolism of coins and banknotes issued by the central bank, to the heraldry of local governments and to

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*Az európai uniós jog etikai vonatkozásai. Kritikai elemzés, különös tekintettel az Egyház társadalmi tanítására* (Budapest: Pázmány Press, 2014).

<sup>32</sup> Csaba Török, *A kultúrák lelke* (Budapest: Új Ember, 2016) 16.

<sup>33</sup> To evaluate the cultural Protestantism that deviates from the faith and to praise its historical role, see László Tőkéczi, 'Keresztyén hit és kultúrprotestantizmus', *THÉMA* no 2 (2000), 80–86.

<sup>34</sup> An example of 'overtaking from the right' is the strong action against the extension of the in vitro programme by the President of the Hungarian Catholic Bishops' Conference, András Veres, on 20 August 2017. See Baranyai Béla, 'Megtérésre és megújulásra hívott Veres András Budapesten államalapító szent királyunk ünnepén', *Magyar Kurír*, 20 August 2017.

the practice of naming public spaces and public institutions. Even explicitly religious gestures may seem to be more of a cultural tradition than a manifestation of faith, for example, considering how, in 2007, the then Budapest city administration called in a priest to bless the tunnel building shield of the new Metro Line 4. It is not just a matter of re-establishing broken traditions – as with, for example, the hospitals in the capital being given back their ‘Holy’ names – but in many cases furthering them, as new institutions have been given similar names, as for example in 1991, when Dunaújváros Hospital took the name of Saint Pantaleon. It requires sensitivity rather than regulation to decide how much and what content the community can accept for public space, or more broadly, community institutions (including public education institutions or public service media) without causing tension. The Saint Martin’s Day lantern parade, or a nativity scene in the municipal kindergarten, seems to be a kind of folk custom rather than the aggressive spread of a religious tradition. At the same time, the kindergarten teacher needs to pay attention to detecting whether some parents are worried about a ceremony due to a conflict with their worldview. At the same time, it is necessary to avoid the child feeling left out of the wider community, and adaptation should not only be expected only from the members of the majority, because in this way we create emptiness rather than neutrality.

The protection of the Christian culture of Hungary is not a command to create a Christian culture but rather the obligation to protect the existing culture. The protection of culture is a legitimate task of the state, but the state is not able to establish and maintain its character: The formation and preservation of Christian culture is still not the responsibility of the state, but of Christians as individuals and communities. A dominant culture detached from its roots sees the Christian faith as the private affair of a small group,<sup>35</sup> and it is precisely for this reason that it becomes intolerant of Christianity. The question is whether Christians should withdraw from society in the age of the new barbarism,<sup>36</sup> or, following the proposal of Pope Benedict XVI, they must strive to save and enrich the tradition of civilisation in a creative, productive minority.<sup>37</sup> The majority society today is no longer a Christian one since Christians – Christians who truly practice and preserve their faith – are present in society as a minority.<sup>38</sup> This minority situation definitely requires greater awareness. The contradiction between the command to protect Christian culture and the weakening of its foundation (the Christian faith) is not merely apparent. Its resolution requires, above all, the freedom for religious communities to truly develop their identities and thus contribute to the renewal of society.<sup>39</sup>

<sup>35</sup> Pope Benedict XVI, *Die Kirche und der Scandal des sexuellen Mißbrauchs*.

<sup>36</sup> Rod Dreher, *The Benedict Option: A Strategy for Christians in a Post-Christian Nation* (New York: Sentinel, 2017).

<sup>37</sup> Pope Benedict uses Arnold Toynbee’s expression.

<sup>38</sup> László Gájer, ‘A legutóbbi pápák víziója Európáról’, *Theology* 53 (2019), 126–137.

<sup>39</sup> László Gájer, *A periféria teológiája*. Manuscript.

## VIII Conclusion

Freedom of religion requires understanding and sensitivity to religion because communities that live their faith can benefit society as a whole. As society becomes non-religious, religion is becoming less and less comprehensible to the majority of society; more precisely, it can only be understood when it is not taken really seriously, when it is perceived merely as a custom or tradition. A separate issue is that self-secularisation is a dead end: Religious communities can never give up enough of their specific heritage to satisfy a secular society. With the emergence of religious expressions in the public space as a result of secularisation, society and the law are also becoming increasingly insecure and mistrustful. Lack of understanding is not incidental to the legal treatment of religious expressions either. When society treats it strictly as a private matter, it displaces almost all manifestations of religiosity from the public space, making religiosity and religions themselves incomprehensible to outsiders. A non-incidental benefit of healthy pluralism could be that the presence of different religions in society becomes natural: a religion lived authentically makes followers of other religions more willing to understand and be patient. At the same time, the state, if it is not to be its own enemy, must build on the cultural preferences and historical traditions of society. The constitutional provision on the protection of the Christian culture of Hungary calls for this. Those who understand its roots have a special responsibility to sustain our culture.

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