

# Religion and Fundamental Rights in European Politics: Convergences and Divisions at the European Parliament

François Foret

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**Abstract** European legislators must increasingly deal with issues related to fundamental rights. Religion is a frequent topic obliging them to do so. It is not directly part of the EU's competences but is a source of values underlying policy choices and a tricky political object. Relying on the findings of a survey about what Members of the European Parliament (MEPs) believe and what they do with these beliefs, the article analyzes potential tensions created by religion in the implementation of human rights by the EU. A first part shows how and to what extent European law meets religion, and how it leaves ample room for flexibility but also for divergent interpretations. A second part states that MEPs agree largely on the principle of separation between politics and religion, but may be divided when it comes to drawing boundaries between the two domains. The conclusion points out the limits of the rule of law to prevent conflicts and suggests that human rights may inspire support as well as cause resistance to Europeanization.

**Keywords** Fundamental rights · European Union · Religion · European Parliament · Secularism

## Introduction

EU policies dealing with fundamental rights increasingly face the religious issue. The encounter is most often indirect and involuntary. Both at the legal and sociocultural level, religion is an embarrassing guest. In the European legal order, the EU has no proper competence to interfere in religious affairs. However, God keeps popping up on the European agenda through various policies in terms of freedom of belief and expression, equality rights, regulation of diversity, or neutrality of the public space. Supranational decision makers and judges are keen to avoid these matters when they

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F. Foret (✉)

Jean Monnet Chair ("Social and cultural dimensions of European Integration", SocEur),  
CEVIPOL-Institute for European Studies, Université Libre de Bruxelles, CP 172 39 avenue Roosevelt,  
1050 Brussels, Belgium  
e-mail: fforet@ulb.ac.be

can do so, as they involve potentially high costs and are of little benefit. When “Brussels” or “Strasbourg” intrudes in domestic controversies with a religious dimension, national public opinions and politicians usually resent this external intervention, and beneficiaries of European actions are generally minorities or peripheral actors whose grateful support has no great political weight.

Turning now to the sociocultural background of politics, religion in Europe is no longer the major social force that it used to be, a force able to create long-lasting cleavages, to prescribe electoral behaviors and public decisions, and to nurture loyalties and identities. However, religion retains influence as an underlying structure of meaning, impacting political and ethical choices. Scholars have shown the correlation between levels of cultural liberalism and democracy. Cultural values, and notably religious ones, are strongly related to the existence of a sustainable democratic order and the development of policies respecting fundamental rights (Inglehart and Norris 2005). What is remarkable is the resilience of the cultural and religious values inherent to a given society. Despite the upsurge in cosmopolitan communications exposing all societies to liberal discourses, social communities retain distinctive national and traditional cultures protected behind the “firewalls” of their immediate spheres of belonging (Norris and Inglehart 2009). The European Union is one of the best fields in which these conflicting trends can be seen. Despite limited cultural differences between and within European societies compared with those that are non-European, gaps remain, and institutional attempts to nurture a common identity and dense interactions have had only a limited success.

This article analyzes the cultural and religious values of Members of the European Parliament (MEPs) and the way these may interfere with the implementation of fundamental rights. MEPs are the largest group of supranational decision makers and, as representatives elected by universal suffrage, the most likely to reflect European cultural diversity. They have very rare opportunities to take explicit positions on religious issues as they do not vote on such matters, but do have to rule on norms which have ethical or identity dimensions. A large survey held from 2010 to 2013 (Religion at the European Parliament [ReLEP], <http://www.releur.eu/index.html>)<sup>1</sup> investigated the religious beliefs of MEPs, what they do with these beliefs, effects of religion on the functioning of the European Parliament (EP) and on national and party loyalties. The findings presented here provide information on the way European representatives conceive of the articulation between religion and politics and, subsequently, how they frame the implementation of fundamental rights on religious issues.

The first part of the article clarifies the extent and limits of the impact of European law on religion and the resilience of politics as the main regulatory repertoire. European law meets religion increasingly but faces limitations set by the self-censorship of European lawmakers and resistance of public opinions and social actors to supranational intrusions. Therefore, European norms regarding religion are bound to remain elusive and to leave ample space for reinterpretation and flexible practices. Ritual invocation to fundamental rights appears as a permissive symbolic language allowing political arrangements to comply with social claims and national pride.

<sup>1</sup> ReLEP is the first survey of its kind. National teams in nine countries interviewed 167 MEPs reflecting diversity of the assembly in terms of national and party membership, gender, and seniority. An extensive presentation of data may be found in Foret (Foret (forthcoming), *The Secular Canopy. Religion and Politics in An Integrating Europe*) and in a collective book to be published.

The second part of the article presents the preferences stated by MEPs on the relationship between politics and religion. A consensus exists on the necessity to separate the two domains clearly. However, the means to achieve such a separation are not so obvious. It is not considered opportune for the EU to develop a specific religious policy. By contrast, a reinforced European action to promote fundamental rights including those concerning religion is supported by a majority. It confirms that religion is not primarily an object in itself but rather a field secondary to other issues. Other indicators draw a picture of MEPs who have a higher level of cultural liberalism than their European electors and who are open minded to religion provided that it does not harm individual rights.

The conclusion looks back at the broader picture to make sense of these findings in two ways. Firstly, what happens at the EP shows that the EU, as the last outcome of European modernity, does not escape from the religious question. The rationalization of domination relying on the rule of law is not sufficient to enforce a “one best way” approach and to eradicate conflicts by a consensus on human rights. Secondly, religious issues handled by MEPs illustrate how human rights may favor the reinforcement of the EU but also fuel resistance to such a process.

### **Fundamental Rights and Religion in the EU: Between Law and Politics**

Human rights are presented as the purpose and the strongest legitimization of European integration. However, it is not always easy to reconcile the respect of 27 different national cultures, national pride, and implementation of abstract principles. The challenge is particularly tricky when religion comes into play, with its historical arrangements between spiritual and temporal powers and its identity and memory loads.

#### European Law and Religion: Growing Interactions That Still Need to Be Understood

Unlike many European states, the European Union as a legal system has not been built in opposition to a preexisting church defending its own legal and political positions. The EU has emerged from European societies which are already largely secularized. So we could say that it has originally grown at an arm’s length from religion. However, with the diversification of European competence, issues with a religious dimension are more frequently on the Brussels agenda. As a result, there is a greater amount of scholarly articles by lawyers to document how European norms clash with religious practice, often indirectly, despite the reluctance of European legislators and courts for this to occur. In many cases, European norms are of a general nature, and it is up to the national political and judicial authorities to interpret and apply them to religious issues. Ad hoc solutions are found, usually following a very cautious and conservative line (Vincente 2004). European judges of the Court of Justice of the EU or the European Court of Human Rights show little originality and daring compared to their North American counterparts (Bribosia et al. 2009). The “climate of opinion” that may result from mediatization can also play a role to invite judges to practice self-restraint, as illustrated in the *Lautsi v. Italy* affair triggered by the decision of the European Court of Human Rights on the usage of the crucifix in Italian classrooms. Nevertheless, the *Lautsi* affair remains an exception in its public

dimension. It illustrates that supranational interventions—both legal and political—in matters concerning religion are viewed as illegitimate and often only partially affect social practices, thus underlining the limited influence of European norms. Limits may be systemic (general self-restriction of European law), contextual (the climate of opinion), political and corporatist (resistors of politicians and national lawyers), social, and cultural (reception of the norms in the field).

### Highlighting the “Gray Zone” Between Law and Politics, Between Norms and Practices

Scholars have highlighted the existence of a set of general principles of EU law that are common principles in the national legal traditions of the Member States when it comes to dealing with religion (for example the freedom of religion and right not to have a religion). However, these principles may be interpreted very differently according to national histories and political circumstances. Therefore, the regulatory framework created by the European institutions has remained a pluralist and open environment (Doe 2011). Lawyers underline the existence of formal and informal agreements between political and religious institutions. Informal settings may be all the more significant as they are not clearly visible and thus cannot be easily contested. This gray area is particularly important in European law, where religion has a number of privileges and exemptions in the legal instruments of the EU (Doe 2011). Studying the production and implementation of European law is a way to assess the various uses of the idea of Europe as a community of values and norms. The debate on the Islamic veil (ban of the burqa or restricted right to wear a simple veil for some social actors according to the country) is a good example of the shifting references to the European background. In most cases, the idea of Europe works like an “empty signifier,” a discursive and deliberative framework without a specific content (Ataç et al. 2012). Another illustration of the plasticity of legal frameworks is the principle of subsidiarity. It is used both to protect national law from the intrusion of Europe and to empower the religious civil society to contribute to European deliberation. In short, subsidiarity can function both as an intergovernmentalist and a communitarizing device (Barroche 2012).

The EU, through its recent character and its internal cultural diversity, illustrates the difficulties of recomposing the relationship between politics and religion more clearly than most Member States (McCrea 2010). At a national level, a certain cultural homogeneity on the one hand, and arrangements made invisible by tradition on the other hand, limit the polemic. At the European level, the regulation of religion is to be invented *ex nihilo*. There is no inertia of vested interests and/or the undisputed weight of a demographic majority or historical heritage imposing the acceptance of possible inequalities between confessions or between believers and nonbelievers. Inequalities do exist but can be more easily challenged in Brussels than in national capitals. European norms have not (yet?) created a stable and clear pattern. A clarification of the legal framework could be required to diminish the arbitrary practices left to the discretion of decision makers. As McCrea stated, the challenge may be “to replace [national] systems characterized by *de jure* privilege, which is moderated by shared cultural norms, with more black-and-white [European] norms that more accurately reflect the *de facto* situation of limited religious influence” (McCrea 2010).

## Politicization of Law, Juridicization of Politics

The postulate here is that law is the necessary but insufficient regulatory repertoire of the contemporary forms of religion in European societies. Religion has been turned into a cultural resource to express claims for recognition, to build identity and memory discourses, and to offer symbolic reassurances to counterbalance the traumatic effects of economic and social changes. This culturalization of religion also means its politicization. Religion is today a raw material for strategies seeking the attention of public authorities or of the media. Unavoidably, the politicization of the uses of religion provokes a politicization of its regulation. The rule of law is the dominant and the only legitimate reference invoked to solve conflicts with a religious dimension. However, legal principles are adapted to respect specific configurations and needs. Demographic and political imbalances lead to asymmetrical treatments of majority and minority denominations by national and supranational authorities. National pride and traditions are left untouched by European judges and legislators when states consider that their fundamental interests and symbols are at stake. Norms incorporate culture (Hirschl 2010; Weiler 2007; Brague 2005). Reasonable accommodation, margin of appreciation, and proportionality are policy and legal narratives leaving ample space for political considerations and flexible practices. The politicization of religion through law is obvious at the national level. It is all the more visible at the supranational level. Indeed, in Brussels, there is no long-established and unquestioned tradition to occult political arrangements made to please majority denominations or to quieten vocal minorities.

### **MEPs, Fundamental Rights, and Religion: in Search of an Open European Secularism**

The way MEPs handle religion is to understand, against this background, where law and politics constantly overlap. Referring to what MEPs state, there is no window of opportunity for the emergence of a proper European religious policy. “Bricolage” is likely to be a long-lasting solution to articulate legal principles and political compromises. Still, a consensus emerges on a framework which ensures the separation between religion and politics while respecting the choice of individuals.

#### Religion: Object or Occasional Component of Public Policy?

Religion is more of a secondary than a principal item within the hierarchy of European public action domains. It is on the agenda of MEPs as a social reality but not as a major one, and this is not about to change.

#### Religion as an Issue: the Undesirability of a Specific Policy

When MEPs are asked how religion intervenes in their activity, they mention that it is primarily as a social and political reality (38.2 %) rather than as a source of inspiration (31.2 %) or through contact with lobbyists (19.2 %). Thus, religion is above all an issue, rather than a set of values or a network of actors. This does not

mean that MEPs feel there is a need for a European public policy directly addressing religion. On the contrary, MEPs are resolutely opposed to any such prospect. The question put to MEPs about their religious beliefs and what they do with these beliefs was intentionally broad, so as to leave room for a wide range of possible interpretations: either in terms of EU intervention in the regulation of the status and funding of denominations, or in the promotion of religious liberty and pluralism, or—and why not?—in the re-evangelization of Europe. The core issue is whether the EU should clarify its legal apparatus and/or its public action in matters of religion. And the answer is unambiguous: three quarters of MEPs (72 %) say no.

This massive refusal of MEPs to support a European religious policy is worth noticing, as they usually welcome any extension of European competencies. Here, comparing ReLEP findings with results from another survey is useful. According to Hix et al. (2011), 61 % of MEPs ( $n=172$ ) favor an extension of European competences in matters of fundamental rights, including religion. They suggested that there should be a lot more (30.8 %) or a little more (30.2 %) EU-wide regulation on discrimination on the grounds of gender, race, religion, age, disability, and sexual orientation, while 25 % are happy with the same level of regulation and 13.9 % wish for a little less or a lot less. This confirms that religion has legitimacy as one object among many others to be addressed by the EU as part of a progressive agenda to promote human rights, but does not have legitimacy in itself as a specific issue.

### Religion and Politics According to MEPs: Clear Boundaries, Many Accommodations

Fundamental rights drive religion onto the agenda of the EP rather than the contrary. It is verified when MEPs are asked questions measuring their cultural liberalism, questions which can be seen as proxies to attitudes towards fundamental rights. These questions are taken from international values surveys in order to allow comparisons with average Europeans. In short, MEPs are broadly comparable with their electors. They show a higher level of cultural liberalism tempered by pragmatism, probably due to their firsthand experience of different politico-religious traditions in Brussels.

### A Consensus About Formal Separation Between Politics and Religion

Indicators used here are related to the place of religion in the political world, in the selection of rulers and in controversies on ethical choices. Overall, MEPs present a strong cultural liberalism and attachment to pluralism as well as to the right of everyone to express and put into practice their own beliefs.

To compare MEPs with their electorate and with other populations, it is possible to ask a question commonly used to assess the democratic potential of a society through its acceptance of the right not to have a religion for its leaders. The rejection of the statement that “politicians who do not believe in God are unfit for public office” is considerable (83.9 %) among MEPs. Clearly, faith is not a legitimate element in the selection of rulers. This does not come as a surprise, but it illustrates the difference with other regions of the world where the personal religious affiliations of rulers remains a significant parameter (Inglehart and Norris 2005).

Faith is not required in order to rule Europe, but it is not excluded either. Forty-six percent of MEPs disagree with the fact that it would be better for Europe if more people

with strong religious beliefs held public office. But 25 % agree, and another quarter is unsure. This suggests a relative openness. There is opposition towards seeing religion as a normative source of authority likely to exercise any form of constraint, but there is no a priori refusal of religion as a possible source of inspiration.

This data casts a different light on the influence attributed to religion in battles over positions of power at the EP. Several failures by outspoken Catholics to achieve the presidency or the investiture of the assembly have been portrayed as the martyrdom of faithful believers in the materialistic and soulless political world of Brussels. In fact, political explanations of these failures seem sufficient on their own, without referring to religious considerations. Subsequently, it also means that fundamental rights are not the sticking points which would be fatal for people with strong religious beliefs facing the European assembly. In the famous Buttiglione affair, the opposition to the Italian applicant as Commissioner was as much due to institutional competition between the Parliament and the Commission as to the declaration by Buttiglione about homosexuality, human rights, and immigration (Foret 2007). It is the same for candidates to positions within the EP. The Presidency of the European Parliament has frequently been held by leaders known to be pious and observant Catholics, reflecting the numerical predominance of Christian Democrats. There are no obvious divisions between denominations, nor between believers and nonbelievers. Whatever the candidate believes, what matters is the display of his/her compliance with the moderate secularism, understood as the common ground for all Europeans.

A good illustration was offered by the competition between Jerzy Buzek and Mario Mauro as candidates for the Presidency of the Parliament in 2009 (Taylor 2009). Some MEPs considered that Mauro was an unacceptable choice due to his proximity to the Holy See and his strong conservatism. His faith was in itself less of a problem than its radical nature and its potential political effects on fundamental rights. There were also concerns that his appointment would be perceived across the assembly as a provocation and could endanger the agreement with the Socialists and Democrats (S&D) about the rotation of the presidency between the European People's Party (EPP) and S&D. Eventually, Mauro was asked to withdraw. Another row took place in autumn 2012 over the candidacy of the Maltese Tonio Borg as a Commissioner for Health. Borg was criticized by European liberal secularist civil society with having campaigned fiercely to entrench Malta's ban on abortion in the national constitution in 2004 and with expressing intolerant views on homosexuality. He was accused of defending ethical views which are in contradiction with fundamental European values. His candidacy was supported by his government and his political group, the EPP (Vassallo 2012). Clearly, the specter of the Buttiglione affair haunted spirits on both sides. Finally, the nomination of Borg was voted through by the EP after he offered strong assurances that he would give priority to EU principles over his own beliefs. This is a further illustration that how religious a leader is is not a problem as soon as it passes under the yoke of moderate secularism and loyalty to fundamental rights.

### Different Configurations of Influence for Religion on Politics

MEPs agree or strongly agree with the proposition that religious leaders should not influence how people vote in elections (61.1 %) or government decisions (52.4 %). These two issues are distinct. A representative from a country with a participatory



culture may favor a strict separation between religion and politics when it comes to elections but accept religious influences achieved by means of lobbying. A liberal MEP may be intransigent at the institutional level over the need to restrict religion to the private sphere, but be in favor of letting individuals decide for themselves whether or not they wish to be influenced by their religious leaders. Beyond these nuances, there is a significant convergence in acknowledging a separation rooted in the national systems of all Member States under different institutional forms. To this restricted extent, it is possible to speak of something like a European *laïcité*. The dominant view is best expressed by the words of a British Liberal:

[The EU] should have a policy respecting all, discriminating against none and insisting on separation between religion and politics.

Principles are one thing, but accommodations dictated by political realities are quite another. Congruencies between the views of representatives and those they represent may depend on strategies aiming either at following dominant opinion trends or at gaining recognition by breaking the consensus. They may also depend on the nature of the issue at stake. Some religiously loaded debates such as euthanasia and abortion are high-profile issues with their own logic and a long history of well-established divisions, so that politicians and voters can coordinate their preferences without relying on ideology to define their positions. On other issues, more recent and less stable issues such as multiculturalism (whether cultural minorities should assimilate or be allowed to keep their own culture; management of religious diversity) remain somewhat unregulated and make the congruence between voters and those elected more variable and difficult to anticipate (Andeweg 2011).

A comparison between MEPs and Europeans suggests that the elected are both more liberal and more pragmatic than the electors in their articulation of politics and religion. According to ReIEP, 83.9 % of MEPs disagree with the statement that “politicians who do not believe in God are unfit for public office,” compared with 58.4 % of Europeans. This rejection of religion as a criterion for the selection of rulers is even stronger among political elites. When religion is considered as an optional personal attribute, the gap between MEPs and Europeans is almost nonexistent. Among both electors and the elected, a majority does not support the statement that “it would be better if [there were] more people with strong religious beliefs in public office.” A difference reemerges when relationships between political and religious authorities come into play. MEPs agree with their constituency (albeit less unanimously) in considering that “Religious leaders should not influence how people vote in elections” (61.1 % of MEPs versus 75.4 % of Europeans). As political candidates, they may perhaps be less reluctant to benefit from electoral influences, or as political entrepreneurs and realists, they may acknowledge the power still exerted by churches. This gap becomes still more significant with the proposal that “religious leaders should not influence government decisions.” Of MEPs, 52.4 % agree with this, compared to 72.1 % of citizens, and 25.9 % of MEPs oppose it, compared to 11.8 % of citizens. Here, principles are clearly in tension with political realities. European politicians are convinced of the need to separate politics from religion but do in fact experience regular interactions with religious authorities, a practice legalized by the Lisbon treaty (Article 17 TFEU). They may also be willing to represent as best they can the diversity of interests within their social constituencies, and to do so,



they should be prepared to welcome any input from stakeholders. More cynically, they may be ready to compromise with friendly lobby groups. This would explain why they are less firm in their rejection of the influence of religious leaders.

MEPs are attached to the protection of fundamental rights as the “core business” of the EU, and they are also aware of the necessity to compromise to reconcile different ideological and national traditions. This attitude also applies to the way they tackle normative issues. Freedom of conscience and freedom of choice for each individual is the supreme principle guiding their assessments, which is also a way to keep norms flexible.

One example taken from ReLEP is a question again regularly used in international value surveys to assess the level of cultural liberalism. To the statement that “if a nurse is asked to help perform a legal abortion, he or she should be allowed to refuse on religious grounds,” MEPs agree (52.3 %), while 36.9 % oppose this option. Opinions are more equally divided on this issue than on any other regarding politics and religion, ranging from strong agreement to strong disagreement. This means that an issue as symbolic as abortion has a polarizing effect. It also means that there is a tension between two principles of free choice, the choice of the mother and the choice of the nurse. It is more a matter of one fundamental right against another than fundamental rights against religious beliefs about the sacredness of human life.

It is useful to compare the ReLEP findings with results from another survey on MEPs on abortion (Hix et al. 2011). Among MEPs, 65.7 % unambiguously support a woman’s right to decide about abortion for herself. Nevertheless, 15.7 % disagree or disagree strongly, and 18.6 % neither agree nor disagree. This means that the free choice of abortion is not an obvious response for one third of MEPs. Still, MEPs’ responses regarding abortion are more liberal than on other issues such as the decriminalization of marijuana or the reduction of restrictions on immigration. Abortion may be considered a fundamental right for European women, one more unassailable than cultural practices forming part of youth culture or policy decisions to regulate population flows. Moreover, MEPs strongly support tougher action against criminals and are somewhat divided when it comes to deciding between defending welfare spending and the need to raise taxes.

The overall picture is thus mitigated. MEPs are rather in favor of cultural liberalism, but they are also keen to respect individual choice, including when this choice leads to illiberal positions where a nurse would exercise his or her right to withdraw. An underlying motivation may be the desire to leave all options open and to go for the more flexible scenario in order to avoid conflicts. Overall, it confirms that commitment of MEPs for fundamental rights depends strongly on the configuration of each debate. Religiously loaded matters may be more intense but are not different from other issues.

## Conclusion

When fundamental rights meet religion in European politics, they prevail clearly in the mind of European legislators. Religious purposes as such are not legitimate arguments in Brussels’ arenas, and mobilization of religious references for political, identity, and memory enterprises has to comply with due reverence to the lexicon of rights. It means that resistances to the EU human rights regime cannot be based on a

purely cultural discourse borrowing from the sacred. However, religious argumentation is sustainable when it is reframed in the language of free choice or freedom of expression. Moreover, another way to give back prominence to religion over law is to promote the idea that law has its origins in religious thought. Therefore, whether through or behind fundamental rights, God continues the fight.

Going back to the broader debate on religion, human rights, and the EU, the conclusions are twofold about, firstly, the opening of value-conflicts and the way to terminate it and, secondly, what it means for the EU. On the one hand, the analysis of positions taken by MEPs confirms that the rationalization of domination through legal means performed by the EU is not sufficient to prevent conflicts. The “rule of law” does not enforce a consensual interpretation of human rights likely to diffuse dissent. On the contrary, human rights are the subjects of controversy and activate new political and judiciary battles.

The potential tension between individual freedom of choice and separation between politics and religion leads to the question of who has enough legitimacy to make decisions in the EU. Here, the comparison with the USA is useful. Key issues of American value politics related to religion (for example about abortion or homosexuality) are frequently solved, not by representatives or by the executive, but by judges. So far, European judges are not entitled in this way, but are keen to play the same role. Besides, American judges as well as politicians are clearly identified according to their religious preferences, making possible some forms of public debate and control. If the EU were to follow the American path in terms of juridicization, more transparency and mechanisms of “checks and balances” regarding the religious orientations of political and legal decision makers could be required. But such an evolution would hurt the European tradition relegating religion in the silence of the private sphere.

On the other hand, conflicts about the interpretation of human rights applied to religion are not univocal as far as the evolution of European integration is concerned. In some cases, crises may appear as reinforcing a European community of values and the progress of cultural liberalism all over the continent. In other cases, human rights are used to protect existing national systems of accommodation between politics and religion. In both scenarios, European institutions in general and the EP in particular are not decisive and are nevertheless often criticized for entering fields where they do not have any business or legitimacy in doing so. In short, the role of the dynamic interactions between religion and human rights for the future of the EU is uncertain, but what is certain is that politics will be as important as law to carry the day and that national arenas in direct touch with societal trends will be the major battlefields.

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