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Law Religion Multicultural Societies

Право Религия Мультикультурные Общества

انون والدين في المجتمعات متعددة الثقافات
多元化社会中的法与宗教

LAW, RELIGION AND COVID-19 EMERGENCY

EDITED BY
PIERLUIGI CONSORTI

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DiReSoM Papers

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Pierluigi Consorti

DiReSoM (Diritto e Religione nelle Società Multiculturali – Law and Religion in Multicultural Societies) is a research group created in 2017 by Italian Scholars in Law and Religion.
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LAW, RELIGION AND COVID-19 EMERGENCY. INTRODUCTION

Pierluigi Consorti

1. In 2019 the World Health Organization warned that «The world will face another influenza pandemic – the only thing we don't know is when it will hit and how severe it will be. Global defences are only as effective as the weakest link in any country's health emergency preparedness and response system». This threat has suddenly come to light, first in China (officially, December 31st 2019), then in Italy (officially, on 31st January 2020, when two Chinese tourists in Rome tested positive for the virus) and quickly all over the world. A new coronavirus named SARS-CoV-2¹ has been identified as the cause of the Covid-19 disease. This new strain of virus spreads primarily through interpersonal human contact and interaction. Those who contract the virus are carriers of Covid-19 and can spread the acute respiratory condition through the exchange of droplets of saliva via touching, coughing and sneezing, and by infecting surfaces which in turn spread the virus through contact.

¹ SARS stands for «severe acute respiratory syndrome», recognized as a global threat in March 2003, after first appearing in Southern China in November 2002; CoV stands for «coronavirus»; according to the International Committee on Taxonomy of Viruses (ICTV), the novel coronavirus has been labeled «2», as it is a sister to SARS-CoVs.

The reaction of the world's society has involved all fields of human activities, without ruling out the law, since the battle against the virus was fought with an ancient weapon: that of social distancing. In fact, despite great scientific advances, humanity in the 21st century fights epidemics with a millennial remedy: «stay away», and don't be the cause of the contagion.

In the stories of the Hebrew Bible, G-d is usually accountable for all spheres of life. Hence, G-d has a role both in bringing illness and in curing from it. For instance, G-d sent 10 plagues before the Jews were liberated from their slavery in Egypt: one of which was the plague of boils on human and animal bodies (Exodus 9:9), conceived as an evidence of G-d's power. Nevertheless, as the Covid-19 epidemic continues to rage all over the world, Rabbinic authorities have written that «the sword is hitting the entire surface of the planet», and for believers it represents a message to humanity to wake up and move towards an internal renewal that cannot be postponed. The current pandemic poses a question of meaning, as it challenges the man to question his ability to fight an unknown and invisible enemy, counting only on rational or scientific forces. Rabbis link the observance of religious precepts to the rigorous application of state regulations; indeed, respect for the latter is itself a religious obligation, as the orthopraxis of Judaism translates precisely into the observance of the mitzvot, and the law represents its ontological essence, as recalled by the Talmudic saying of Solomon «Dina de-Malkuta Dina» («The law of the kingdom is law»). G-d commands: «Now choose life, so that you and your children may live» (Deut. 30:19). Therefore, compliance with all the *mitzvot*, even in the most problematic circumstances, is combined with the irrepressible obligation to protect one's own health and that of others by every means.

A deeply rooted narrative throughout medieval Christian Europe understood the epidemic as a divine punishment, from which it was possible to escape only with prayers and devotional rites. The challenge posed by the deadly bubonic plague in the mid-14th century triggered a search for the sources of the calamity: Europe's Jews were a handy and suspicious target. Pogroms against Jewish spread around Europe and Jews were bludgeoned and burned to death.

In August 1527 the bubonic plague had come to Wittenberg, Germany. Everyone who could get out of the village was getting out. The cause of the disease and its mode of transmission was not known, but the conventional wisdom was clear: «stay away from the sick». The Elector of Saxony, John the Steadfast, ordered Martin Luther to leave. He refused, and wrote a letter entitled «Whether one may flee from a deadly plague», to explain the importance of caring for our neighbor and suggesting the community to take the necessary steps to protect others. Luther defended public health measures such as quarantines and seeking medical attention when available. Those in ministry, he wrote, «must remain steadfast before the peril of death». The sick and dying need a good shepherd who will strengthen and comfort them and administer the sacraments—lest they be denied the Eucharist before their passing. Public officials, including mayors and judges, are to stay and maintain civic order. Public servants, including city-sponsored physicians and police officers, must continue their professional duties. Even parents and guardians have vocational duties toward their children. But Luther does not encourage his readers to expose themselves recklessly to danger. His letter constantly straddles two competing goods: honoring the sanctity of one's own life and honoring the sanctity of those in need.

Islam relies on some teachings related to the life of the prophet Muhammad - Peace be upon Him - «when you hear that [a plague] is in a land, do not go to it and if it occurs in a land that you are already in, then do not leave it, fleeing from it». Other hadith says: «There is no unbidden contagion, no evil omen, no death bird (*hama*), no tape-worm (*safar*), and one should keep away from a leper as one keeps away from a lion».

2. To achieve this social distancing, it was necessary to restrict many fundamental freedoms, mainly that of movement and reunion. Freedom of worship was necessarily limited too, and the world's religious authorities have had to cope with the contagion by changing millennial rules. As scholars engaged in the study of the legal regulation of the religious phenomenon, we decided to create a web space to collect documents, comments and other useful materials related to the emergency, in order to assess the outcomes of the normative decisions made by civil and religious authorities. So, on March 8th we have created www.diresom.net. By the end of April, we had already published more than 500 documents and comments related to this issue, and more than 20.000 unique visitors had surfed our website. Therefore, we decide to edit an open source book to share in a more orderly way the Comments that we have already published online, thus giving the possibility to consult these first guidelines to all those who want to study or analyze the legal reaction, both state and religious, to this pandemic.

Our intention is to collect material which will, in time, allow a more careful study of the social and religious transformations brought about by the war against the virus. At the moment, we have identified three major research question.

The first concerns the relationship between law, religion and emergency rules. The emergency creates a state of exception that produces new laws, rules and behaviors determined by the need to react quickly, which should be characterized by temporariness. And this is not an appropriate attitude for producing rules that will last in an indeterminate time.

The second one involves a more specific aspect of religious rules, which by their nature seem to be not modifiable by human will. Many religious rules are based on God's will, and therefore appear substantially unmodifiable. However, the fight against coronavirus has produced changes previously unthinkable, therefore the emergency appears as a source of religious law. Is it possible to imagine a "state of exception" for religious laws?

Finally, the third question concerns the quality of this emergency, which is health-related, and therefore different from other emergencies that may also produce legal modifications or rules of exception, such as wars or natural disasters.

We hope to be able to answer to these and other scientific questions, and in the meantime we offer the academic community the comments that we have begun to outline while we are still in full emergency.