
Law and religion: towards a redeemed social integration

Direito e religião: rumo ao resgate da integração social

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Abstract: The more the international scene is caught in a snarl, the more fundamental principles of coexistence begin to crumble (Sidoti, 2026). The matter at stake is not exclusively of scholarly interest, but the “solutions” proposed in the public space are more than frequently trivial and virtually impossible to obtain: “learning to navigate the schism”, “engage with others’ different points of view”; “advocate for more regulation and removal of extremist and hateful content on platforms and global scenarios.” Fortunately, there has been a rise in awareness on certain corners and on what can actually be done to overcome “the crises of the modern world” whose causes are “a desensitized human conscience, a distancing from religious values, and the prevailing individualism accompanied by materialistic philosophies deifying the human person and introducing worldly and material values in place of supreme and transcendental principles.” Suggestions met with disdain when “the only voices to be heard in public debate are those of the powerful and ‘experts’” (Fratelli Tutti, 2020). The truth, however, is that among the experts the least considered are those who have most profoundly analysed society’s “primary anchors of social order” (Parsons), the “shields against chaos” (families, schools, media, associations, political parties, churches) that articulate our experiences and appropriate everyone’s “inner nature to create subjects capable of speaking and acting” (Habermas). Well before the present schism, these experts had already identified the circumstances of what we are witnessing today (countercultural forces, pervasive crises of

authority, ruling orders unable to lead through consensus, masses turning away from exhausted ideologies, disjointed 'structures of affect,' dismantled collectives, public spaces seized by a culture of commercialization) as "morbid symptoms". This essay explores the reasoning of those sidelined experts and their conclusions.

Keywords: overcoming dualisms; victims neglected; fundamentalist reforms; processing morality; crisis of civic character; social integration redeemed

Resumo: Quanto mais o cenário internacional se vê envolvido em conflitos, mais os princípios fundamentais da coexistência começam a ruir (Sidoti, 2026). A questão não é exclusivamente de interesse acadêmico, mas as "soluções" propostas no espaço público são com frequência triviais e praticamente impossíveis de alcançar: "aprender a navegar no cisma", "dialogar com pontos de vista diferentes dos nossos"; "exigir mais regulamentação e remoção de conteúdos extremistas e odiosos em plataformas e cenários globais". Mesmo assim, existe certo aumento da conscientização sobre os problemas e o que pode de fato ser feito para resolvê-los. Por exemplo, quando se reconhece que "entre as causas mais importantes das crises do mundo moderno estão uma consciência humana dessensibilizada, um distanciamento dos valores religiosos e, um individualismo predominante acompanhado de filosofias materialistas que divinizam a pessoa humana e introduzem valores mundanos em lugar de princípios supremos e transcendentais." Causas, no entanto, encaradas com desdém quando "as únicas vozes ouvidas são as dos poderosos e dos 'especialistas'" (Fratelli Tutti, 2020). Só que dentre esses especialistas os menos considerados estão justamente os que analisaram mais profundamente as "âncoras primárias da ordem social" (Parsons), os "escudos contra o caos" (famílias, escolas, mídia, associações, partidos políticos, igrejas) que articulam nossas experiências e se apropriam da nossa "natureza interior para criar sujeitos capazes de falar e agir" (Habermas). Precisamente os especialistas que, bem antes do cisma atual, já haviam identificado as circunstâncias das quais hoje todos somos testemunhas (forças contraculturais, crises generalizadas de autoridade, ordens governantes incapazes de liderar por consenso,

massas se afastando de ideologias exauridas, “estruturas de afeto” fragmentadas, coletivos desmantelados, espaços públicos tomados por uma cultura de comercialização) como “sintomas mórbidos”. Neste artigo exploramos o raciocínio desses relegados especialistas e suas conclusões.

Palavras-chave: superação de dualismos; vítimas ignoradas; reformas fundamentalistas; moralidade processada; crise do caráter cívico; integração social resgatada

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In memoriam

JÜRGEN HABERMAS (1929-2026)

Our belief in the universality of Western culture suffers three problems: it is false; it is immoral; and it is dangerous. (Samuel Huntington)

A cast of academics continues to stage epic dramas of conflict between forces of good (“The West”) and forces of evil (“The Rest”), seemingly unaware of the interconnectedness of cultures and the interdependence between East and West, North and South. (Arshin Adib-Moghaddam)

1 Foreword

For quite some time, most of us have taken for granted the incompatibility of modern life with religion, thereby disregarding the latter’s function in society except when it came in handy as an

institutionalised right in the legal or civil context. Thus, alongside other ‘equal freedoms’ officially placed religion would allow one to engage in actions whose “consequences are likely to produce differences in status” (Parsons, 1977:334), so less prestigious denominations could either be restricted by private employers or entities (U. S. Constitution, First Amendment) or even banned if deemed contrary to “public order or good morals” (Brazilian 1946 Constitution). Be that as it may, the social function of religion has always been the same as that of law and the justice system – namely, integration of social actions through coordination and control to establish and maintain interdependence and sources of consensus and of coercion. Particularly in contemporary society, the functional symmetry of religion and the juridical complex is such that “without religion law degenerates into a mechanical legalism,” and “without law religion loses its social effectiveness” (Berman, 1974).

A deep-seated symmetry of the kind found also in the dynamics of the three interacting agents of Freud’s structural model of psyche (1949): super-ego (i.e., internalization of social patterns: values (conceptions), norms (convictions, “ways of doing”) and models of conduct), always “in close touch” with id (i.e., innate and unconscious, functioning as a reservoir of drives and psychic energy), super-ego’s “representative” in relation to ego, the seat of anxiety, the conscious self that balances impulses and social patterns. In which way? By displaying “particular severity” towards the ego and raging against it “with extreme

cruelty”, the superego imposes deep-seated, inscrutable “feelings of guilt.”¹ Law and religion, virtually in the same way – and much like Samuel Beckett’s elusive Godot – perform through social patterns an integrative function. Which is why

“[...] it is erroneous, even outside of sociological consideration, trying to find the difference between ‘law’ or ‘moral’ in the sense that the legal norm only and exclusively regulated the ‘external’ conduct and the moral norm, on the contrary, the intention only. [...] For sociological consideration, ‘moral’ is identical to what stands as ‘religious motives’ or by virtue of ‘convention’. [...] There is no ‘moral’ precept of social relevance that has not, in some way and in some place, been a legal precept.” (Weber, 1996:263)

In turn, Howard Berman sought to clarify the mutual dependence/ action/ influence of law and religion, and found its roots in presuppositions that have guided Western and non-Western legal and religious thinking for the past nine centuries: in the ‘principle of certainty’ obtained, according to Jeremy Bentham (1748-1832), through classifying knowledge into mutually exclusive ‘bifurcations’ – so that “if we say law is divided into penal and non-penal, we feel certain, in the very form of the

1 Also Norbert Elias (1978) on how power relations become embedded in social actors – whether as self-restraint, habitus (‘second nature’), or discipline –, and psychic structures are molded by social attitudes, so normative patterns regarding manners, violence, intimacy, and emotional expression are gradually transformed. Internalised willpower imposed by increasingly complex networks of social connections (social differentiation processes, increasing dependencies, and development of state power structures) and a developed ‘super-ego’ exert a strong, irresistible force on social actors (individuals, groups, nations, civilisations) to exercise greater self-control, curb their emotions, regulate impulses, and behave in a ‘instructed’ way.

statement, that we include every sort of law under one or other of these designations.”

Again, as claimed by the British classical jurist’s ‘digital logic’ – the foundation of modern computing and electronics, based on binary states (‘bits’) whereby all information is processed in ‘1’ (true/high tension) or ‘0’ (false/low tension) – one “can only compare two things together – not three or more at a time. In common language, we do speak of comparing more than two things together, but the operation by which we accomplish this end is compound, consisting of deductions drawn from a series of comparisons, each relating to only two things at a time.”

“According to Bentham, either a thing is so or it is not so; either it is physical or it is psychical; either a proposition is clear or it is ambiguous; either a law is penal or it is not penal; either an entity is real or it is fictitious, etc. Admittedly, this ‘bifurcate system,’ as he called it, may have some utility as a method of exposition so long as the expositor and his reader or listener attach the same meanings to the ‘condividends;’ but Bentham used it also as a method of knowing reality and of exhausting its nature. In reality, however, opposites combine” (Berman, *idem*).

In this essay, we show how some postmodern criticism revealed fundamental flaws of this “advanced” logic. Earlier than that, Berman argued that opposites do indeed combine, so “we can no longer accept truth simply in either-or terms; again and again it presents itself to us as both-and”, i. e. synthesis, the “overcoming of dualism”, key to a “new kind of thinking of the new era that we are entering,” the age of not “subject versus object

but subject and object interacting; not consciousness versus being but consciousness and being together.” The problem however, is that instead of a ‘new era’ the world has entered and still remains in a ‘season of discontent’, a Gramscian interregnum marked by uncertainty ingrained in ‘morbid symptoms’ such as revamped colonialism, political and affective stances polarized in terms of ‘like’-‘dislike’, ‘trust’-‘distrust’.

Perhaps more than ever before, thought and language today still express differences “as between two” – as suggested by Bentham in remote times and confirmed not long ago by Berman – deteriorating thereby the “rich complexity and differentiation” of human production depreciated into ‘binary categories’: like-dislike, right-left, right-wrong, truth-fiction, us-them, loyal-traitor (Bauman; Bordoni, 2016). A sinister binarism hard to kill in language as well as in thought, in the structure of society – whose main components are social patterns (Parsons, 1971: 307) –, supposedly because “what remains to reconcile is people’s inner worlds,” an extremely complicated undertaking since “the rationalization of what is irrational is constantly and quietly suppressing people’s minds, and this process will intensify with the development of modern science and technology. This will be a difficult problem for Western society for a long time.” (Wang, 2022: 241)

Difficulties notwithstanding, binarism has been effectively confronted in the juridical complex by a particular form of warfare, a Kleinkrieg in which small specialised units have achieved

significant victories. As the case of a struggle to compel law and justice systems to cease understanding social processes and other branches of knowledge as simply objects of perception, and begin approaching both as an enterprise in which privileged, supposedly neutral observers also take part. A mission hard to traverse in which tactical units of experts have stood out from the frame of reference of Restorative Justice, the best-known and most tested “path to follow, as it works precisely with the so-called material criteria of interest to both victims and offenders, whilst promoting the reconstruction of the social fabric” infringed upon by unlawful deeds (Tiveron and Arruda Neto, 2023: 52-3).

Significant progress indeed because, as RJ ‘combat units’ justify, the criminal justice classic model stands out for being a perverse context of “neutralization of the victim” promoted by the state through its “monopoly on legal sanctions” that systematically “downplays the importance of the victim in criminal proceedings” and endorses a convenient view of “the victim’s role as a mere means of proof.” Hence, a quarter-of-a-century Kleinkrieg fought, for instance in Brazil, with remarkable albeit systemetically curtailed successes, to upgrade the status of victims of criminal offenses and infractions, although still only within the scope of the Public Prosecutor’s Office:

Request a minimum amount for reparation of damages/ To present proof of the value of material and moral damages suffered/ To offer the perpetrator, as part of plea bargaining, the possibility of compensating for material and moral damages/ To not disclose full victims’ names in legal documents/ To request and safeguard

the confidentiality of victims' sensitive data/ to show empathy towards victims in the course of hearings/ Referral to the official care network/ invite victims to take part in restorative justice procedures/ Request the use of bail for repairing damages (Tiveron and Arruda Neto, pp. 56-75).

Substantial changes indeed, in spite of victims remaining in practice the “greatly forgotten” actors of criminal processes, reduced as they are to “mere means of proof,” sources of information useful only to establish perpetrators’ guilt. No wonder legal scholars have insistently pointed out that systems of justice depersonalize the conflict between victim and offender and hollow out a profound abyss between them and the state, the three real protagonists of criminal events. Hence, usually flimsy, unsubstantial, and impersonal pseudo-solutions that prioritize system members’ and offenders’ perspectives rather than those of victims.

Courts’ disregard for victims is traditional, much older than, in ancient England, a peasant denounced a nobleman for raping his baby daughter. The feind, however, didn’t flinch: simply threw one of his gloves on the ground and demanded a sentence by combat. The victim’s father understandably refused but the court, assuming the legitimacy of the gentleman’s demand, dismissed the case. A kind of neglect that today remains virtually the same, even if more nuanced, considering that now victims have become ‘political assets’, manipulable adherents of interest-appealing platforms contrived by populist parties, from the right or the left. Hence, the categorisation of victims into

- (a) ‘intersectorial’, taken advantage of because discriminatory attitudes often converge and determine intersected victimization in complex racial, class, gender and sexualised ways; or
- (b) ‘identitorial’, subject (in leftist agendas) of ‘structural discrimination’ based on gender, sexual orientation, social or class background; or exposed (in rightist agendas) to exclusion/ criminalization of national, ethnic or religious ‘others’.

Centuries have passed and, despite seeking to assert their place as protagonists in judicial processes, victims have instead become mere resources in elites’ political power struggles. Meanwhile, criminal justice subsystems focus on punishment to achieve four core goals: deterrence, retribution, rehabilitation, and incapacitation. Punishment, on the other hand, is widely recognised not merely as a legal response, but as a social institution shaped by cultural values, economic conditions, and power dynamics. Consequently, institutional actors remain blind to the systemic tendency to respond with increasingly severe sanctions—a trend fueled by moral panics and the political exploitation of public fear (Wickert, 2026).

Faced with a contemporary shift toward a ‘culture of control’ through punitive patterns required by *mano dura* policies², scholars and governments now ant then promote ‘penal reforms,’ such as

2 Populist measures of punitive law enforcement strategies, predominantly in Latin America, to fight gang violence, organised crime, and political opposition. *Mano Dura* (‘iron fist’) It prioritises, over dialogue, prevention or rehabilitation, mass arrests, prolonged incarceration, and deployment of military troops and heavy weaponry to patrol and lock down marginalised neighborhoods or communities.

the one in Brazil forty years ago. As expected, it was concerned solely with punishment as the critical component of legal norms, defined by its function as society's reaction to detrimental values and models of behavior, set out as the solution for the 'problem of social order'. Also expected, however, were those who insisted on approaching punishment not in terms of retribution or prevention, not in the least of restoration, but of contention of punitive power itself. Specifically in Latin America, "where the enforcement of criminal law by public agencies is distorted and prone toward excess, ending up contributing to social inequality and marginalization of a large segment of the population, singled out as regular clients of the penal system—generally poor, black, and residents of urban peripheries" (Bottini, 2025).

2 Dead Souls

*I saw that I'd
get nowhere on the
straight path, and that
to go crookedly was
straighter (Gogol)*

Ever since the 1970s 'oil shocks' abbreviated Europe's 'three glorious decades' of everlasting growth and dreams of cheerful future, the reformers of society grew increasingly convinced that there was something wrong with the social universe. Accordingly, interest in knowing more about it consequently declined and replaced by a perception that it no longer reproduces itself adequately. Mapping it in terms of change or stability became too difficult if

not impossible. A generalised feeling that social phenomena are not substantial, consequently has seized intellectual imagination and, as if for no other reason than to disavow the dialectics of social processes, scholars now agree that in modern society the notion of stability must be disentangled from the idea of change – so that innovation and creativity can become unconditionally the primary focus (Lane and Ersson, 1987). Former crusaders in the quest for the key to unlock the rigid mechanisms of social reality, were thus obliged to agree that everything they did before was irrelevant.

Today's social reformers, if any, concede that the world is undergoing a gradual, irreversible process of dissolution, moving back to a kind of 'patrimonial capitalism' under oligarchical inherited wealth (Piketty, 2013), and gripped by far-reaching techniques of communication ensuring 'maximal disagreement on all points' (McLuhan). They grant that Gramsci might had a point on the demise of the 'old world', but as if to preserve a sense of purpose while accommodating to a pervading uncertainty, they find solace in blaming the oppressive authority of 'metatheoretical postulates', of 'theories of theories' on knowledge, human condition, ethics, values, and power. Above all these, they place most responsibility on the notion that ameliorative projects grounded on 'circumstances of phenomena' (as Comte called, emphasizing empirical, testable truths) are considered now "too philosophical", detached from practical usage, "interesting but virtually useless."

“There was a time when political and intellectual reformers were absolutely fascinated with leading metatheoretical postulates, but the opinion increasingly operative is that in the past quite frequently they had suffocated creativity. What is more, they are now said to be among the major underlying causes of the current intellectual and political impasse in the ranks of social reform. They are a hindrance to be removed so that innovative social design can, from now on, be given a fair, better, new beginning” (Scuro, 1992: 285).

Even so, how could we assertively connect variables or visualise properties in a model without incorporating foundational constraints into the mainstream of our intellectual and political traditions? Moreover, they must let one and all know how to stand on crucial issues, above all on issues brought to the fore precisely in junctures where mankind lives decisive hours. Accordingly, it is not surprising that even research based on the most tried-and-true models can still be read in conflicting ways. Most specifically in contexts of pervasive crises of authority, ruling orders unable to lead through consent, masses drifting away from exhausted ideologies, disjointed ‘structures of feeling,’ the affective foundations of social connections and consciousness (Sharma and Tygstrup, 2015). Contexts or times of disassemble collective structures, pervasive media, and encroachment of public spaces by commodification and the culture of marketing.

These postmodern circumstances of phenomena were not foreseen and since the future cannot be foretold simply by exploring them, what is seemingly left are strategic decisions

on how social actors “organise themselves internally, what they invest in, who they choose to align with and who wants to align with them, which wars they fight, which they deter, and which they avoid” (Sullivan, 2023). Reactions similar to those of the academic expert in defence politics whom I questioned on the schemes used by hegemon powers to restrain other countries’ strategic decisions: “Brazil,” he pointed out, “isn’t challenged much by foreign threat or mission, by competition from countries (like Turkey, Israel, and South Korea) that have real threats to prepare for, and by alliance-buying countries wisely favouring suppliers from nations who protect them. Your country protects no one, is allied with no one, fights no one, and [worst of all] doesn’t buy much itself.”³

He failed to take into account, however, that under unfavorable conditions determined by the circumstances in which we currently live., what seems ‘real’, fixed, fast-frozen, is “swept away [...] melts into air,”⁴ changes radically from one moment to the next – as happened, for example, with the United States’ foreign policy in Donald Trump’s second presidential term. In truth, our expert only made sure that even those closer to inner circles of power – a distinctive trait of most respected reformers of today –, simply look back and search for enlightening revelations in their historical past. What they seek and find are fundamentalist disclosures to appease one’s ‘urge for control’ and to close down

3 Harvey M. Sapolsky, personal communication, Aug. 3, 2023.

4 Karl Marx, *Manifesto of the Communist Party*, chapter I.

dialogue in favour of truths that are “apparently universal and unquestionable” (Bauman and Kania, 2018).

Truths of a kind anticipated and promptly reproduced across frontiers by Donald Trump’s political platform: emphasis on individualism framed by a “Judeo-Christian identity,” a supposedly ‘personal relationship’ between God and man (Soloviev, 2008: 52) endorsed by plausible but fallacious arguments on, for instance, discriminating nationalism, Western predominance,⁵ rejection of multiculturalism, and eradication of “cultural threats” embodied in immigration of peoples cursed with “the mark of Cain” (Genesis 4: 11-16) and “nothing in common with us and our culture” – people from lands that failed to assimilate the institutional structures of economically more successful lands, namely Muslims and Latinos who could “divide the United States into two peoples, two cultures, and two languages”.⁶

Such a programme’s principles, goals, and political postures predictably pay no attention whatsoever to relations between cultures and institutional structures, even less to proper theoretical

5 Winston Churchill was in the habit of sermonising on the magnitude of “our Christian values” and “our civilization” secured by the “fraternal association” of UK, USA, Australia, Canada and New Zealand, the controlling shareholders of *Five Eyes* (FVEY), the Anglosphere’s military and security intelligence alliance to counter “potential dangers” posed by the Soviet bloc, now the Russian Federation. Extrinsic “third parties” are *Nine Eyes* (FVEY plus Denmark, France, the Netherlands, and Norway) and *Fourteen Eyes* (Nine Eyes plus Germany, Belgium, Italy, Spain, and Sweden) in associate capacities except sharing FVEY’s intelligence.

6 ‘2024 Republican Party Platform’.

frameworks, let alone considering social structures from a comparative perspective, the historical importance of dissimilar cultures, and on how economic and technological progress bears on distinct institutional trajectories (Greif, 1994). Fundamentalist planks lack legitimate argumentation and, far from being original, they basically reproduce boorish fears of ‘denationalization’ of business, corporations, autochthonous professional, intellectual and academic elites, generally berated as “dead souls” by reformers hooked on decision-making circles (Huntington 2004).⁷

3 Values as national strategy

*Not knowing the
other and not knowing
oneself – in every battle
certain defeat. (Sun
Tzu)*

“The world needs our leadership more than ever. To keep engaging with the world as a responsible power. To be a force for peace and for positive change.”⁸

“The problem of moral leadership and creating an attractive ideological basis for the future world order becomes increasingly urgent. In the critical context of the Western liberal model, a few states are purposefully attempting to erode traditional values⁹, to

7 Originally, “dead souls” satirically typified the moral and spiritual crudeness (*пошлость*, *poshlost'*), the pretentiousness and philistinism of middle aristocracies, particularly when faced up by “threats” posed by social reforms (Gogol, 1842, 2022).

8 Jean-Claude Juncker, president of European Union, Nov 27, 2019.

9 “Living in society means take a stand, choose all the time between different standards – *social patterns*: values, norms and models of conduct – whose contradictions generate tension and conflict, forcing to decide, among several

distort world history, to revise views on the role and place of Russia in it, to rehabilitate fascism and incite interethnic and interreligious conflicts. Media campaigns are carried out to create a hostile image of Russia, the use of Russian language is restricted, the activities of Russian media and the use of Russian information resources are prohibited, and sanctions are imposed on Russian athletes. The Russian Federation is unjustifiably accused of violating international obligations, carrying out computer attacks and interfering in the internal affairs of foreign states. Russian citizens and compatriots living abroad are subject to open discrimination and persecution.”¹⁰

Creating moral guidance based on “attractive” ideology is a relative novelty associated to the idea of ‘cultural values’ or ‘morality’¹¹, also a recent phenomenon, unknown before the 19th century’s final decades. Tome-se como exemplo a busca “in vain [...] for an explicit terminology of ‘values’ [...] in the utterances of ancient Greek philosophers, in the Hebrew Bible, the New Testament [by] the church fathers, medieval scholastics and early modern moral philosophers” (Harrison, 2020). A futile search that gave way, in the 14th century, ‘values’ as expression of material or monetary wealth of something; meaning extended, in the sixteenth century, to measures of physical quantity.

It’s no wonder that values, ‘Western’ or ‘Russian’, are extra-

possibilities, which is the most convenient” (Scuro, 2004: 124).

10 (Russia, 2021, emphasis mine, PSN).

11 The shared basis of society’s *normative order* composed of “social patterns”: *conceptions* (values), *convictions* or “ways of doing” (norms) and *models of conduct*, prescribing ways of behaving in different situations (Scuro, 2004:128).

societal categories¹² that are ‘processed’ before being incorporated in a social system as functional elements as ‘Western/Russian image’, ‘language’, ‘media’ and so on.¹³ In as much as culture is concerned, to be institutionalised as part of the general ‘definition of the situation’, values “must be conceived both as components of the structure of the social system and specified to the level of norms”¹⁴ (Parsons, 1977: 355). By the same token, standardised ‘affects’ that underly our experiences of feeling, emotion, attachment or mood, to be operative must be ‘transformed’, ‘institutionalised’, ‘socialised’ in a ‘structure of feeling’, as mentioned earlier.

The idea of morality through processing goes hand in hand with sociology’s gradual evolution towards the form and structure it displays today: stripped of the outward appearance of ethical science, political or social philosophy concerned with shaping a ‘fair order’ of human relations, it converged on the elements that determine the integration of social systems. That is to say,

12 “[...] functional elements of an international society that make up a supra-system of which all particular societies are part. The international cultural system constitutes a good example of an extra-societal system” (Easton, 1965).

13 Hence the idea that “new ideological values can be moulded by thinkers and then offered to society” (according to Sergey Karaganov, in Scurto, 2024)

14 Norms/normative guidelines/institutionalised ‘ways of doing things’. Convictions that “in principle cannot be provided by impartial social sciences”, such as sociology, but by “dogmatics of reflection” or “self-reflections of social practices”, systematised in the legal field, as well as in dogmas relating to correct ways of acting in the worlds of business, industry, religion or politics, sharing and informing the respective basic normative guidelines of law (Teubner, 2015: 92, Scurto, 2019: 34).

it converged on ‘social patterns’ conveyed by families, schools, media, fellowships, political parties, namely institutions that articulate experiences and appropriate our “internal nature [self-knowledge, intentions, reasoning and moral value] to create subjects capable of speaking and acting” (Habermas, 1976). Institutions that are in fact ‘outdated’ and incorporated into ‘juridical persons’ (the state, and subsidiary companies, administration, political and social movements) whose function is to define and pursue collective goals and mobilize actors and resources to attain those ends. (Scuro, 2004 chapter IV)

Therefore, it is plausible for the state to enumerate among its objectives – amidst safeguarding sovereignty, upholding fundamental civil and human rights, improving interaction with civil society etc. – the protection of “traditional spiritual and moral values from encroachment” (Russia, 2021, para 46). Based on such premises it seems natural for a government to “develop civil society institutions, support for socially significant initiatives, advance interaction between civil society institutions and the population with public authorities in resolving issues that may cause increased social tension” (para 45, 5). In the same vein, to “combat illegal migration, reinforce control of migratory flows, social and cultural adaptation and integration of migrants” (idem 16); along with “prevention and neutralisation of social, interfaith and interethnic conflicts, separatist demonstrations, prevention of the spread of religious radicalism, destructive religious movements, the formation of ethnic and religious enclaves, social and ethnocultural isolation

of certain groups of citizens” (idem 17).

Nonetheles, a burning question remains : aren’t ‘traditional’ social patterns anything but another false, immoral and dangerous form of infringing the rights and freedoms of those who “have nothing to do with us” and increasingly also the rights and freedoms of our own citizens and foreign allies?

“It has been a triumphant fortnight for the [Joe] Biden. First the House [of Representatives] and then the Senate overcame meek opposition and at last voted to pass foreign aid bills worth more than \$95 billion that include military funding to continue Ukraine’s war against Russia and Israel’s war against Hamas in Gaza. The vote was praised by America’s newspapers: a New York Times report said that the issue before Congress was whether the United States ‘would continue to play a leading role in upholding the international order and projecting its values globally.’ The Associated Press channelled the House leadership, calling the vote ‘a turning point in history – an urgent sacrifice as US allies are beleaguered by wars and threats from continental Europe to the Middle East to the Indo-Pacific.” (Hersh, 2024)

4 The American benchmark

*The revolution
fought and won by
America’s working
class, was in fact World
War II, ... the revolution
that confirmed the myth
of a national character
to be partaken of by all.
(Philip Roth)*

Differently from their Russian counterparts, Western elites

do not show much concern with the ‘problem of moral leadership’ nor in the least with the creation of an ‘attractive ideological basis’ for a future world order. Many would say that the future is or has been already theirs since the demise of the Soviet Union. Seems different for the most advanced segments of Western intelligentsia, media and above all the general public; apprehensions made clear by a project conveyed to respond to “our present crisis by inquiring into the principles and practices of citizenship” in a liberal democracy, “whether and how they might be adapted to the conditions of the twenty-first century” (Allen and McGuire, 2020). Ergo, we are told that from one end to the other there is a “near universal agreement that America is in a state of crisis”, ultimately “a crisis of civic character”¹⁵ (emphasis mine, PSN), reflected by “profound disagreements about the nature and requirements of American citizenship ... increasingly out of sync within our constitution ... thereby putting our political union at risk.” Consequently, “following Plato’s insight that the character of those who rule (in our case, ‘We the people’) defines the character of a regime, it is fair to say that our political community is imperilled by devolution into several competing regimes, or, as Madison would have it, factions”.

James Madison’s concerns were certainly more than justified. Right from the beginning the matter we knew until very recently

15 Aggregation of moral and social habits, attitudes and perceptions that enable individuals to balance self-interest with the common good and act as responsible members of a community. Rather than just being “a good person” in private, it is the active practice of positive citizenship in public life.

as ‘American national identity’ has been a contrived affair, to be sure, an “ideological issue” – whose “concoction would inevitably serve the purposes of people with power to promote it” – namely, representatives of a scant portion of inhabitants, preponderantly Anglo-Saxon and evangelical, of “a country in which just one adult in five affiliated himself (or, more likely, herself) with any church at all.”

“Anglo-Saxon Protestant identity would express the ideological interests of a special stratum of society. Exactly as ideology, it would be thin and abstract. It would never engage conscientiously the distinctive elements of American life that did not serve its celebratory agenda or its persuasive purposes (Zuckerman, 2006).”

Just as it is today, in Madison’s foregone times the trouble with Anglo-Saxon Protestant identity – now ‘Judeo-Christian’, that one expressing a ‘personal relationship’ between God and man – was an intrepid inclination to extremes and excesses in tandem with equally extreme fear to face up its racism, violence, conformism, or philistinism – “No curtain under heaven is heavier than that curtain of guilt and lies behind which white Americans hide” (James Baldwin). Under no circumstances past and present such an identity has been an “emanation of the masses so much as a conscious construction of a few.” Never understood in terms arising from the citizenry it evolved to become the product of a factionist¹⁶ anti-individualism tied in with manipulation and

16Namely, the American corporation, if it were a person, would be “a

conformity (Glazer, 1999) complemented by “retreat from broad social problems, and struggle to mere consumerism” (Batishchev, 2010). Manipulation and conformity, as defined by William H. Whyte (1956) caused a “major shift in American ideology” away from Anglo-Saxon Protestant ethic, frequently triggering violent and needless problems such as when “frantic witch hunters are given free rein” to detect “heresy wherever non-conformity appears” (Gunther, 1994).

Recently, thanks to university students’ Gaza protests, it became crystal clear that even the higher education in the United States has become a corporate-indentured system of power requiring total obedience. Dissent, freedom of expression, critical thought, and moral outrage no longer have a place where corporate managers deformed education into vocational training – “students are taught what to think” and “only the skills and expertise demanded by the corporate state are valued” (Hedges, 2024). A radical shift illustrated by the humanities withering away and major research universities transformed into “corporate and Defence Department vocational schools with outsized emphasis

psychopath”, a vehicle through which “good men and women cause harm to society because of the way the corporation is created and protected by the law” (Bakan, 2004) – see also Canadian documentaries *The Corporation* (2003) and *The New Corporation: The Unfortunately Necessary Sequel* (2020). Now, on the impact of Russian corporate power upon national identity (including during the Soviet Union), the dearth of incisive studies allows counterfactual statements reprehending the “majority of the population” for opposing corporate property rights, thereby creating “a fundamental problem for building a democratic and prosperous Russia” (Guriev and Rachinsky, 2005:148).

on science, technology, engineering and math”.

The impact of such an identity shift imposed by entrepreneurial elites is felt everywhere and can be measured in concrete settings. As shown by a multi-method text analysis of the sense American graduate students make of ‘their’ national identity, revealing that 1) there is a multitude of components not currently discussed nor measured; 2) the invocation of American identity components depends on their setting; 3) the ways components are characterized are just as important as their invocation; and 4) the difficulty expressed by participants to define a singular American identity, underscores the continued salience of a multiple traditions thesis: “many participants were either unable or unwilling to define a singular or true American identity”, a difficulty stemming from “a number of reasons, ranging from the large, heterogeneous nature of the country or because participants believe there is a multitude of co-existing but conflicting ways to be American” (Bui, 2024)¹⁷.

American experience in handling ‘ideological values’ carries a great deal of lessons and practical examples to be reflected upon by enterprising elites around the world. Particularly where leaders supposedly seem inclined to learn from their own people and institutions, as suggested in the Russian Federation presidential decrees on expanding values’ semantic content in modern conditions and determining strategic objectives for promoting

¹⁷The cultural component: awareness and challenge problematic norms, systemic injustices and the overall status quo.

them in virtual spaces. Here, the part to be played by the teaching power of law is critical whenever pleading or arguing for values is at stake.

However, to perform such a decisive role law must, to begin with, free itself from misleading conceptions such as ‘average man’ and ‘reasonable cause’, employed by courts to justify shallow decision standards for assessing ‘normal’ beliefs and assumptions which, precisely “because they are moral cannot be demonstrated or proven” (Holmes, 2000). Hence the belief on “results per se” taken for granted on account that positive law is supposedly divorced from moral considerations, and that an “average conduct is necessary” for a society to function based on the “sacrifice of individual peculiarities in favour of the common good”. Nothing, in fact, more distant from truth as both moral deliberations and ethical pondering on substantive social standards are absolutely pertinent to law aimed at the common good by regulating relations in concrete societies in much the same way as moral norms.

“[The difference is that] law is two things at once: a system of knowledge and a system of action. It is equally possible to understand law as a text, composed of legal propositions and their interpretations, and to view it as an institution, that is, as a complex of normatively regulated action. Because motivations and value orientations are intertwined in law as an action system, legal norms have an immediate effect on action in a way that moral judgement do not. On the other hand, the comparatively high degree of rationality connected with legal institutions distinguishes these from quasi-natural institutional orders, for the former incorporate doctrinal knowledge, that is, knowledge that has been articulated and systematised, brought to a scholarly level, and interwoven with a principled morality.” (Habermas, 1996: 79-80)

Not surprisingly, Holmes' reasoning seemingly reverberated in a Communist programmatic thesis ('Everything for man'), in which the authors posited free individual development as condition for "completely overcoming all survivals of individualism, such as acquisitiveness, arrogance, opposition to the collective, and egoism." The idea was to achieve "an all-round, fully developed personality, dedicated to communist ideals, with a sense of deep responsibility, a morally concerned activism, and a creative attitude toward all aspects of social life" (Batishchev, 2010). Better than 'average man' divorced from moral considerations, the Thesis pledged for something closer to what young jurists today are claiming to be a better metric: a circumstantial human being in the exercise of "freedom to act" determined by rational, emotional and experiential factors (Braga, 2010). A legal fiction portraying adequately informed and fair citizens aware of the law, who consider the risks, extent, costs, and the alternatives of their actions. Conditions already retained since 1947 (*United States v. Carroll Towing Co.*) in the 'Learned Hand Formula', a rule used by US courts in negligence cases to determine whether a defendant's conduct was unreasonable and led to harm¹⁸ (Scurto, 2019: 42):

$B < PL$ (where B is the burden or cost of taking precautions to prevent the harm, P the probability of the harm occurring, and L the magnitude or severity of the harm if it occurs).

¹⁸ Applied in complex real-world cases which require careful consideration of various factors beyond simple calculation.

Accordingly, social order in modern societies and in every legitimation process consists of and is based on contractual relations: (a) on labour and distribution of products of labour; (b) on existential, essentially normative rapports (therefore irreducible to logical, objective, ‘neutral’ rules) conditioned by consciousness’ and social relations’ affective foundations¹⁹; (c) between institutions regulating contrasting standards to which actors orient themselves in their interactions at all levels of society. Thereof emerge theories about social order resulting from (a) individual rights and freedoms based on autonomous decisions; (b) coercion in exchange for guarantees of security and property and mechanisms for resolving disputes; or (c) standards which actors internalise and serve as protection against coercion by institutions (Hechter & Horne, 2003). A waggish mixed bag permeated by game theory on shaping rules before formal discussion begins, is President Trump’s approach relying on transactional, power-based framework, centered on extreme demands, aggressive use of leverage, creating artificial deadlines, and public threats of escalation (Cajot, 2025).

¹⁹Even under “the illusion of choosing and determining the course of our actions, when acting by will we are just a part of multiple sources of affections and affects” – dispositions, mental or bodily states commonly related to a feeling or type of love and affections (experience or feeling of emotion) (Kinoshita, 2021).

5 Conclusions and directions to further research

*Samba descended
upon the city, and in
its wake, civilisation
ascended – for better or
for worse.*

(Paulo da Portela,
1901-1949)

Appraising Parsons, Weber and their approaches to the evolution of law's function in society, Habermas states that law in tribal societies is “interwoven with other normative complexes and remains diffuse,” in the interregnum to “civilisation” it stays “partially autonomous”, and with the development of the state organisation form it finally enters into “a remarkable synthesis” with political power. State power definitely made it “possible the institutionalisation of procedures for legal adjudication and enforcement”, but also constituted itself as “a legally structured hierarchy of offices, at the same time legitimating itself through the legal form in which political power is exercised” (1996:74).

The combination of two separate elements, legal and political, shaped and structured a coherent whole which Weberian ‘historical sociology’ associates with bureaucratic choice dictated by two kinds of rationality. At first, procedural rationality that requires everyone to obey received commands only, allowing no one to be guided and deviated by personal affects – also explaining how ‘organisational indulgence’, the easiness with which members’ failings are forgiven

by freeing them “from real, constant, and imminent risks”. Then, instrumental rationality, beliefs and practices taken from trade, finance and industry – fields “previously considered of irrational conduct” – a kind of rationality related to means and resources from which normative standards are accounted for just “if and when making sense from a business point of view” (Bauman, 1994: 8-13, Scuro, 2002: 127-8).

Thus, with the entry of the ‘ethics’ of the business world into the scene, Weber and followers could finally glorify an ‘ascetic Protestant ethics’ of English and Dutch merchants, bankers, and colonists. Towards the end those self-denying sociologists would focus almost exclusively on the functions of law for the organisation and for the exercise of political power; focus to such an extent that the functional relation between modern law and the rational state’s bureaucratic domination surpasses and virtually wipes out “the specific contribution of law to social integration.” Understandably, the latter does not “receive the attention it deserves,” simply because the constitutional state does not “draw its legitimation from the democratic form of the political will-formation of citizens” (Habermas, p. 73). Rather, state legitimation is premised solely on aspects of the legal medium through which political power is exercised, namely the abstract rule-structure of legal statutes, the autonomy of the judiciary, and the fact that administration is bound by law and its “rational” construction – bound, in truth, by power rationalisation over

(1) social action governed by norms with external and coercive

content;

(2) over reality susceptible to selective interpretations and narratives; and

(3) over society conceived as a vast organism whose parts must perform their functions in a somewhat orderly manner (Scurto, *idem* p. 121) –, allowing Habermas to say in conclusion that “in Weber we find a specifically German view of government by law, a view quite comfortable with the elitism of political parties.”

Quite different from Parsons whose perspective of the modern constitutional state emerges from the constitutionalisation of political power, a process “structurally constrained by the rational validity bases of modern law,” fostering (1) the democratic mode of legitimation anchored in civil society, (2) the political public sphere, and (3) the modern citizenship. Hence his societal community, a term that designates “the core sphere from which each differentiated social system is supposed to have developed.”

“This includes all the mechanisms of social integration: on the one hand, symbolic practices (such as rites, religious cultes, and national ceremonies) that secure social solidarity and, on the other hand, second-order institutions like morality and law that regulate typical action conflicts and thus come to the rescue when the stability of institutionalised first-order expectations is in danger.” (Habermas, *ditto*)

Societal community has evolved into civil society once it has freed itself from the all-embracing framework of the capitalist economy (Hegel’s and Marx’s ‘bourgeois society’), with which lies the responsibility for social integration, that is, the extent to which social actors are incorporated into stable relationships and

‘socialization subsystems’ (families, schools, media, churches etc.) that, as mentioned above, create subjects capable of speaking and acting to share normative patterns, develop social bonds, build collective cohesion. Here, the distressing problem is that the concept embodied in the modern constitutional state has lost progressively – or never had – normative content and focus on social integration. To remedy it would be necessary to reconstruct – or create from scratch, build entirely from the beginning – basic citizenship components not subject to arbitrary interference of pre-made elitist packages.

From here, the route proposed by Habermas is focused on the “intuitively mastered rules for reaching an understanding and conducting argumentation” of subjects in order to transform implicit ‘know-how’ into explicit ‘know-that’ – that is, how we conduct ourselves in the realm of ‘moral-practical’ reasoning. The aim is to escape from relativism (different cultural patterns analysed in isolation, instead of taking culture into account in its totality) typical of post-modernity, and to provide standards for critical evaluation of moral-practical reasoning in ethical and political deliberations. Further recommendations are (1) to bring religion and other traditions to a status they once had, precisely because at present we are not capable of finding substantive answers to the question “How should we live?”; and (2) to clarify norms and procedures upon which ethical, legal and political deliberations depend – for example:

“Doing justice” from a restorative point of view means to give a systematic response to offenses and their consequences by em-

phasizing the healing of wounds suffered by sensitivity, dignity, or reputation, highlighting the pain, hurt, damage, offense, and harm caused by a wrongdoings, counting on the participation of all the social actors involved (victim, offender, community) in the resolution of issues generated by incidents. Restorative practices identify the harm inflicted and influence its reparation, involving people and transforming their attitudes and perspectives in relation to the conventional system of justice, according to the following principles:

- (1) doing justice means above all working to restore, reconstitute, rebuild;
- (2) all those involved and affected by a crime or offense should have the opportunity to participate in restorative processes;
- (3) the role of public authorities is to preserve social order, just as to the societal community belongs the responsibility to build and maintain a fair and honorable social order.” (Scurto, 2002b)

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