

Shedding Light on the Conspiracy: A Reply to ‘The Sacred Conspiracy: Religion, Nationalism, and the Crisis of Internationalism’

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I. INTRODUCTION

Religion plays a central role at the global political level despite being often portrayed as dead, marginal, or irrelevant. The way in which it plays that role, however, is not always immediately apparent or transparent. Professor Berman’s essay attempts to illustrate the various ways – direct and indirect – in which religion is still central in today’s debates about international law and politics. He does that by bringing us back to the interwar period, which saw an abundant flurry of arguments about international law, nationalism, and religion. He focuses in particular on the avant-garde movement led by Georges Bataille, who called for the shaking of civil society by appealing to the destabilizing forces of the (left) sacred in opposition to the conservative forces of the (right) sacred. Bataille’s key insight is that religion has a contagious energy that is far more sweeping and powerful than the mere force of Western rationality. From this viewpoint, (international) law is incapable of taming the crisis of the West and of keeping at bay the perils of religion and nationalism.

While insightful and interesting – it certainly makes the central point successfully – Professor Berman’s account appears controversial at four different levels. First, its genealogical approach does not sufficiently justify the parallel between today’s world and the interwar period. More needs to be said about the framing of the project as well as on the nature of the genealogical approach. Second, the account focuses on the sociological notion of secularization and, in so doing, it hides from view the normative notion of secularism that needs to be kept separate in order to understand key contributions in the debate. Third, Professor Berman’s account unfolds by leaving a conspicuous (democratic) elephant in the room: today’s debates are very much led by the value of democracy and the importance of presenting public reasons when contributing to the discussion of policies; it is odd that democracy does not even figure in Berman’s text. Finally, the aim of the conclusion is to reassert the possibility of secular international law as a framework for dealing

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with religious differences across the world. In this way, we can shed some light on the doubts, fears, and fantasies that arise with the talk of sacred conspiracy.

2. GENEALOGY

Berman's paper attempts to offer a new genealogy of the relationship between religion and international law. His aim is to uncover a deep implication between the two that is complex and ambivalent. He claims that the modern origin of the relationship is to be located in the interwar period during which debates about both the constructive and the destructive power of religion were very intense and dominant. This ambivalent position, he argues, is capable of explaining our contemporary fears and fantasies concerning the role of religion at the international level.

It is not immediately clear what Berman means by genealogy here. He claims that his methodology is interdisciplinary and blends historiography, religious studies, and sociology. However, this does not tell us what the *point* of his genealogical approach is. Nor are we told why those disciplines are relevant and not others. In the most famous sense of the word – that is, Nietzsche's – genealogy refers to the ability of going back to the roots, the origins, of a problem in order to debunk some of the myths that surround the understanding of an issue. For example, in the *Genealogy of Morals* (2006), Nietzsche goes back to the foundation of moral values to show that they rely on untenable metaphysical and empirical claims. In what follows, I will argue in favour of a deep genealogical approach, while I take Berman to mean something much more modest,¹ even if it is not explicit in the text.

A genealogical approach attempts to unveil the origins of the problem and to unravel its foundations, if there are any. Berman claims that the interwar period is the origin of our fears and fantasies about the role of religion in international law and politics today. While it is clear that the interwar period represented a very important chapter in the history of nationalism and international politics, the role of religion in this process is less immediately clear. It is therefore interesting to follow Berman in his attempt to construe a conceptual apparatus in order to bring out of the dark the deep relationship between nationalism, religion, and international law.

Berman's original point consists of claiming the centrality of religion in the formation of modern international law. This is done against the current of those voices who attempted to marginalize the role of religion in the last century at the historical, ideological, or sociological level. I find this claim plausible and important. It is true that many have declared religion dead well before its time and at times were unable to understand its ambivalent vitality. From this viewpoint, *le cris de Bataille* with which the paper begins – 'we are ferociously religious . . . what we are starting is a war' – brings to life the idea that religion was alive and well and was used in debates both to legitimize and to undermine the political forces during the interwar period.

¹ N. Berman, "The Sacred Conspiracy": Religion, Nationalism, and the Crisis of Internationalism', this issue.

The ambivalent role of religion is captured by Durkheim, who is the source of inspiration of almost all those who want to understand religion in society, including Bataille himself. Durkheim presents a dichotomy between the sacred and the profane, the world of things eternal and the world of things contingent and mundane. At first sight, the two worlds are totally heterogeneous, but a closer look at the society shows a deep contagion between the two as well. The relationship is that of attraction and rejection. Moreover, Durkheim also distinguishes between two aspects of the sacred: one side of religion is concerned with social stability and control, and is deemed right sacred; the other side is concerned with radical criticism and challenge of the social structure, and is deemed left sacred.

Le cris de Bataille clearly falls within the left-sacred camp. The avant-garde movement, which he represents, aims to fight fascism not with 'reason but [with] the passions of the masses'.² Bataille wants to mobilize people by talking to their guts rather than to their rational capacity to understand social and political problems. This is the gist of the so-called 'sacred conspiracy' defended by Bataille and used by Berman to understand the centrality and persistence of the religious phenomenon in the formation of modern international law. It is a conspiracy that attempts to drum up the forces of the left sacred in order to destabilize and challenge the fascist forces that militate for the preservation of the social order.

Crucial to Bataille's depiction is the opposition between religion and law. Law represents the side of lifeless secularity, namely the idea of a rational order that preserves customs and traditions while expunging emotional forces such as that of religion, which is the expression of life and vital strength. Law is therefore incapable of taming the fascist forces of the right sacred; if anything, it may contribute to stabilize and strengthen them. It is religion of the left-sacred type that has the task of challenging established nationalism. There is no hope, from this viewpoint, of using international law to curb and limit the forces of nationalism so strong in the interwar period. Needless to say, many disagree with this perspective. Berman contrasts successfully Bataille's views with those of Clyde Eagleton, who believed that religion could give a stronger ethical foundation to the international legal order.

The gist of the internationalist debate lies in the ability of international law to cope with the crisis of Western values after the First World War. Nobody disputes the diagnosis of failure and crisis, but prognoses are varied. On the right, Spengler and Schmitt bemoan the demise of real traditional culture at the expense of a fluffy and bourgeois conception of civilization that provides no serious guidance and relief against the crisis. It is only by resuming a more traditionalist role of religion that it is possible to cope with the failure of the West. On the left, Bataille in particular is seduced by the idea of a 'retour' to more primitive religious forces that spark the life of society and contrast with the rational order that has characterized the Western world.

International law is presented by some people, including Prof. House – chief adviser to Woodrow Wilson – as the antidote to the Western failure. The perils of

² Bataille, as quoted by Berman, *ibid.*

nationalism can be kept in check by the affirmation of the supremacy of international law, House believed. Bentwich, another important name in the internationalist landscape, believed that the crisis originated in the deep intertwining between religion and nationalism: when the two meet, the latter becomes like the former – that is, dogma. They therefore have to be kept separate in two distinct world organizations: the league of nations and the league of religions. It is clear for Berman that these authors have the same preoccupations that keep religion centre stage. Moreover, international law is not free from religious contamination, and Berman shows successfully that all those who thought about it were also reflecting on the link between law and religion.

Berman's genealogical project shows that religion, nationalism, and international law are more intertwined than other scholars would like us to think. This claim is interesting and appealing; however, it has some important weaknesses that I would like to examine in the remainder of this section. The first weakness of Berman's thesis concerns the nature of the claim: is it merely contingent or is it a conceptual claim? The contingent claim follows this line: it is not true that, at a given historical period (the interwar period), religion was marginalized from the debates about international law. It is possible to reinterpret the contingent claim, as Berman does, by showing that central figures in the debate were preoccupied with religion. The conceptual claim is more ambitious and follows this line: it is not possible to talk about (international) law without reference to religion. This is the philosophical debate that occupies Schmitt and Kelsen in their controversy over the so-called political theology.³ Berman only mentions *en passant* this debate, and does not discuss its deep and important implications. It is possible to conclude that Berman's claim is only contingent as I defined it above.

The problem with a contingent claim in this context is that it does not meet the requirement of a genealogical project whose goal is to unravel the deep foundations of a problem. Contingent claims only relate to the surface of a problem and do not address its very structure and origin as required by a fully fledged genealogical approach. It happened that religion was high on the agenda of *some* international lawyers; but this does not prove that it was a concern for all and, more importantly, it does not prove that religion *has* to be a problem for all. A contingent claim of this sort, moreover, calls for a better statistical analysis of the presence of religion in the majority of the works of international lawyers. It takes more than a sample of a few scholars to show that, as a general matter, religion was regarded as a central issue.

The contingent nature of the claim has another important implication for the genealogical approach. It is not clear why the interwar period is crucial to understanding our present fears and fantasies about religion at the international level. This is not to say that the interwar period is not relevant, but the point is that it is as relevant as many other historical periods during which the relationship between religion and politics has been forged. The question is: what makes the interwar

3 On this point, Berman only cites *en passant* an article by S. Baume, 'On Political Theology: A Controversy between Hans Kelsen and Carl Schmitt', (2009) 35 *History of European Ideas* 369, at 369–81.

period so special? The answer in my mind can only be weak and anti-genealogical: it is important for contingent reasons and not for reasons that go deep down to the root of the religious problem. Indeed, it seems to me that Berman does not confine himself strictly to the interwar period, but goes well beyond that when he talks of the genesis of the modern nation-state along with its corollary *cuius regio, eius religio* (to each kingdom, its own religion).

The principle *cuius regio, eius religio* dates back at least to the Treaty of Westphalia (1648); Berman rightly points out that it may even be precedent to that, since the Treaty of Augsburg (1555) already makes it a central feature of the European arena. The principle establishes a strong link between the nation-state and one religion. In fact, after Westphalia, Europe is parcelled out into many discrete regions, each of which is associated with one religion that has a de facto monopoly. It is only disputable if some have regarded the Peace of Westphalia as ‘a key milestone in the epochal secularization’, as Berman suggests. It could conversely be said that that principle establishes religious monopolies at the national level and, by doing so, it forces upon us the intertwining of religion and politics. It is only a contingent matter, then, that the Catholic Church in Italy has remained a central political player throughout the centuries at the national and international levels, whereas the Church of England has faded away from the political scene, despite maintaining its legal status as an established Church. Historical contingencies of this kind do not explain much except the fact that it can go both ways and that, as a matter of realpolitik, there has never been a sharp separation between religion and the nation-state. Thus, it is not the interwar period that teaches us something peculiar about the ambiguous relationship between religion, nationalism, and international law. A deep genealogical approach requires that we dig behind the interwar period.

It is puzzling, for example, that Berman does not mention the gigantic genealogical effort of Charles Taylor in his superb *A Secular Age* (2007). Taylor’s task is precisely to offer a genealogy of secularity spanning five centuries, taking us step by step through the complex meanders of the process that led us from a world in which it was impossible not to believe to a world in which religion is only one element of the sociopolitical landscape. This does not mean that religion has been totally marginalized, as some have claimed and against whom Berman argues. It means, however, that the modern world has a different, more complex relationship with religion that is not usefully captured by the relatively simple conceptual categories that Berman develops starting from Durkheim. Taylor successfully shows that Durkheim is indeed central to the understanding of religion in society, and that understanding has deeper and older roots than Berman claims.

In fact, if we were to push the boundaries even further, it would be easily possible to go back to Dante’s understanding of Europe in his political treaty *De Monarchia* (On Monarchy, 1312). This is one of the very first treatments of religion and international politics, in which Dante argues that the theological primacy of the Pope should not extend to earthly matters that are of the competence of the emperor. Of course, nationalism is not an element of that picture, then, and will only appear later on, possibly with the Peace of Westphalia that recognized legal boundaries to local powers and marked the beginning of a new era. The point I am trying to make remains

that religion is always there and shapes and reshapes the contours of politics in a negative or positive way.

Where *le cris de Bataille* seems to add something to the picture is by suggesting that rationality and the lifeless secularity of the law are powerless vis-à-vis religion. The masses can only be energized by appealing to the primitive forces of religion. However, in intellectual history, this is not a totally novel claim either. Machiavelli, Spinoza, and Marx have focused more than any other thinkers on the possibility of moving or controlling the masses through the means of religion. Each of them was deeply sceptical of religion as a source of false myths and beliefs, yet each was aware of the powerful emotional impact of religion, at times much more powerful than the mere deployment of rationality in guiding the behaviour of the masses. Of course, the link between Bataille and Marx is clear, and that is why one could have expected Berman to engage in a genealogical effort spanning beyond the interwar period.

Bataille's claim aspires to a universal ambition, however, by presenting itself as 'in opposition to the world of the civilized and its light [*sa lumière*], evoking the French term for the Enlightenment'.⁴ Berman follows this aspiration closely and that is probably why he takes the interwar period to be so important. However, the very ambition of Bataille is based on a partial misunderstanding of the Enlightenment. Its rejection is only possible if enlightenment stood for a definitive and clear position, but the truth is that the enlightenment was characterized by ferocious disagreement on almost every topic and this has been marvellously documented by the work of Jonathan Israel in his trilogy covering that period in detail.⁵ The central insight of Israel is that there were two families of Enlightenment thinkers: one radical and one moderate. The radical family was deeply opposed to any form of religion in politics, while the moderate family believed that religion was a good instrument of control of the mind of the many. Radical Enlightenment stood for real emancipation of the individual from any source of myth and coercion, while moderate Enlightenment stood for a progressive emancipation guided by the elites. Enlightenment was even more variegated and complex than this, but the point to bear in mind is that to be against the world of the civilized and *sa lumière* does not mean much and cannot amount to a serious manifesto, unless one is clear about what kind of Enlightenment one is standing against.

Berman's genealogical approach shows some limits in its contingent historical nature, as I just argued. I started by pointing out that Berman only mentions *en passant* the debate between Schmitt and Kelsen, which encapsulates the core problem of religion and the nation-state. How can the nation-state portray itself as the ultimate authority on matters of belief and behaviour without attempting at least to replace the Church, who played that role for so long? Schmitt obviously believed in the state as a theological concept, whereas Kelsen always attempted to free political

4 Berman, *supra* note 1.

5 J. Israel, *Enlightenment Contested: Philosophy, Modernity, and the Emancipation of Man 1670–1752* (2008); *Radical Enlightenment: Philosophy and the Making of Modernity 1650–1750* (2002); *Democratic Enlightenment: Philosophy, Revolution, and Human Rights 1750–1790* (2011).

authority from any metaphysical apparatus. This debate is still very much central today at the national and international levels, and it is certainly a central preoccupation of lawyers, philosophers, and political scientists.⁶ Even if this issue resurfaces powerfully during the interwar period, its genealogy brings us back a few centuries at least to the thinking of Hobbes, who erected the Leviathan as a secular god. It is clear in all these writings that religion has always been at the centre stage of the national and international political arena. The process of secularization has not erased religion, but it has simply changed its role.

3. SECULARISM, SECULARIZATION

Berman points to an ambiguity in the link between religion and the secular by distinguishing between two types of secularization: 'a separation between the secular and the religious domains and the "retreat of religion as the dominant sphere" of society' and 'the translation and "transfer" of religious contents into secular form on both the ideological and institutional planes'.⁷ Berman explains that those two forms of secularization correspond to Durkheim's idea of heterogeneity and contagion: 'Whereas secularization-retreat emphasizes the heterogeneity of the religious and the secular, secularization-transfer posits the persistent, pervasive, even if covert, ways in which religion informs seemingly secular cultural ideas and forms.'⁸

The dual notion of secularization performs an important role in Berman's paper. First of all, it points to the ambiguity of the historical process: sometimes, it works as a transfer from religion to the secular; other times, it works as a retreat of religion from the secular. Second, it also contributes to highlight that there are different forms of religion. Bataille, for example, believes that Christianity is a secularized form of a purer type of primitive religion.⁹ Third, the dual character lends itself to a dialectical approach. There is no linear progress towards one form of secularization, but a complex set of transformations and mutual influence. Any attempt to strictly separate religion from the secular leads to a situation of contagion. Fourth, internationalists who want to separate international law from the negative influence of nationalism are described as secularized priests performing an act of purification of the international instrument. Fifth, for Hayes, nationalism is regarded as a secularized version of religion, although also inferior. Sixth, international authority is a form of secularization-transfer where religion is separated from the law. The list could go on, but I stop here since I believe that the message is clear: religion does not disappear altogether, but mutates and influences the secular world in ways that are not immediately apparent.

The dialectic of secularization proposed by Berman has the advantage of explaining in more nuanced terms many sociological issues that have to do with religion, nationalism, and international law. All those phenomena can be looked at as

6 See note 3, *supra*.

7 Berman, *supra* note 1.

8 *Ibid.*

9 *Ibid.*

instantiations of a changing environment in which competing forces fight for survival. Berman captures a snapshot of the interwar period that is more complex and interesting than that offered by a narrative that merely shows the progressive and linear waning of religion. Things are certainly more complicated and we can surely see it today as we witness a rise of some religions in global politics. With this in mind, we can nonetheless offer some critical insights on the way secularization is conceptualized by Berman.

To begin with, secularization is presented as a descriptive sociological tool that pays little attention to the normative and ideological side of the secular world. In other words, Berman does not mention the distinction made in the literature between secularism and secularization. The latter is a sociological process through which human societies move from a situation in which religion is predominant to a situation in which religion is one element of a complex web of relations. Needless to say, the process is gradual; otherwise, it would not be a process, but a discrete event. The former is a normative project that was launched with the Enlightenment and includes a set of strong values that aim to inform the morality of any political society. The advocates of secularism do not call for a gradual process, but want instead a revolution of the mind.¹⁰ Emancipation of human beings can only happen by the sheer shaking off of prejudices and false hopes created by religion. The distinction between the normative and the descriptive plans is important, since their success is measured and assessed in different ways. Secularization, being a gradual process, is successful in so far as a society manages to retreat from, or transform, religion. Secularism is successful if its core values are regarded as paramount and are capable of producing reasonable compromises between religious and non-religious people. Berman does not make this distinction and, as a result, his depiction of the interwar period lacks the ability to differentiate between ideological positions and genuine sociological descriptions of the transformations of the West in relation to the religious phenomenon.

There is another problem: if the affirmation of the secular is only regarded in terms of sociological process (of retreat and transfer), then the idea of the ambiguous relation between religion and the secular loses much of its grip. It is normal to understand a sociological process as going through different stages and steps, all of which are not necessarily smooth and linear. Since a process is not an all-or-nothing type of concept, it obviously implies a good degree of dialectic between two seemingly opposed terms such as religion and the secular. This means that what needed to be demonstrated by empirical findings is in fact already stipulated by the use of the notion of secularization. It is not a surprise, then, to find so many instantiations in which religion and the secular are intertwined and confused because this idea is already contained in that of secularization.

Charles Taylor, for example, attempts to avoid the problems connected with secularism and secularization by focusing on the notion of secularity, which lends itself to a more detached observation. The starting point is the fact of secularity, rather

¹⁰ See the Israel trilogy, *supra* note 5.

than a project or progress: we live in a secular age and this seems to be intuitively true, but what does it mean? Taylor distinguishes at least three different types of secularity: (i) political secularity: when religious belief is removed from the public sphere to the private sphere as a result of a political compromise; (ii) social secularity: when belief fades away from our daily life and no longer provides a benchmark for our behaviour; and (iii) historico-philosophical secularity: it is interested in the evolution of the intellectual framework within which religious belief is understood. These are three distinct areas of inquiry, each of which is immensely complex and difficult. Taylor only focuses on the last one and produces an impressive work of over 1000 pages. Berman, by contrast, seems to oscillate between the three areas, thereby generating some ambiguity.

This seems to be the case if you take the very central dichotomy between secularization-transfer and secularization-retreat. This is a false dichotomy, since transfer and retreat are not mutually exclusive; indeed, they may well overlap and even coincide. In Berman's own words:

Whereas secularization-retreat emphasizes the heterogeneity of the religious and the secular, secularization-transfer posits the persistent, pervasive, even if covert, ways in which religion informs seemingly secular cultural ideas and forms. This homology is close enough to suggest that the two sets of dichotomies may be viewed, respectively, as anthropologized and historicized versions of very similar notions.¹¹

Thus, we have a dichotomy that is not a real dichotomy after all. Starting from there, it is not difficult to find ambiguities in social practices reflecting both notions at the same time. For example, Berman comes to conclude that:

Paradoxically, it was precisely the 'transfer' of 'the prerogatives of the mediaeval Church' to 'each of the national societies', the very paradigm of secularization in conventional international legal historiography, that produced this newly, albeit demonically, sacralized world. This epochal 'transfer', although often celebrated as a 'secularization/retreat', the retreat of religion in favour of worldly politics, was in fact a 'secularization/transfer', the transfer of religious veneration from Church to state.¹²

In that sense, it is not entirely certain that the relationships between religion and international law are as ambiguous as Berman claims.

Berman's discussion of France's colonialist agenda further illustrates the limits of the notion of secularization. Secularization as a process can only take place if the society embraces the value of retreat/transfer and accepts the gradual waning or transformation of religion. Secularization as a process clearly took place in Europe, where religion underwent a deep change in its sociopolitical role. The same cannot be said for colonies such as Syria and Iraq. The society at large never embraced any form of secularization whatsoever, and people are still very much religious to the point of willing at times a religious regime. At the same time, it can clearly be said that France's legacy in both countries (and in many others, including Turkey) was an elitist conception of secularism that the political elite should force upon the masses.

¹¹ Berman, *supra* note 1.

¹² *Ibid.*

This explains the military obsession with *laïcité* in Turkey, and the dictatorship of the Baathist parties in both Syria and Iraq, both parties being strictly secularist. Here, the crucial point is that secularization is not necessarily apt to describe what happened in those countries. Berman would need to add to its conceptual apparatus the ideological notion of secularism (ideological *laïcité*) in order to offer additional insights into what happened (and still happens) in those countries. The same is true with the question of democracy, which plays a very limited role in Berman's account.

4. IDENTITY AND THE DEMOCRATIC ELEPHANT IN THE ROOM

Berman mentions democracy only once in relation to an evaluation of one of Bataille's lectures: 'one could not tell whether the speakers were perfidious anti-democrats or if they were defending a personal conception of an ideal democracy.'¹³ Judging by Berman's standards, democracy is only an accessory to the debate about the relationship between religion, nationalism, and international law. Instead of focusing on the *Demos*, Berman focuses on Identity, the *Ethos* of a community. By choosing to do so, Berman locates the debate in a nineteenth-century setting rather than in the interwar period. Historically, the construction of national identities in relation to, or in contrast with, religion reached its peak in the aftermath of the French Revolution. In Italy, for example, one of the major nationalist poets, Alessandro Manzoni, writes in 1831 that Italy should be united in its army, its language, and its religion.

Identity links nationalism and religion in the worst possible way, by suggesting that the irrational bond that unites us as a religious community is the same bond that unites us as a nation. Of course, international law is readily cut off from this relationship and emerges only when the visceral forces of ethnicity produce massive slaughtering, as in Bosnia; it is at this point that international law enters the scene as an arbiter of ethnic conflicts. This is rather well illustrated by Berman in the section that discusses the *Greco-Bulgarian Communities* case. In that passage, Berman shows that:

The solution to this puzzle seems to lie in Bulgaria's understanding of the new wave of nationalism as aiming at a perversion of the relationship between religious and national identities. Nationalists were now attempting to parasitically usurp identity terms that had a predominantly religious meaning, seeking to subordinate religious identity to national identity.¹⁴

Identity clearly still plays an important role, but it does not emerge as a problem in the interwar period. Moreover, what puzzles me here is that today's debates about law, religion, and the international order are very much focused on the role of democracy in carving out a place of religion. Yes – why not a respectable place?¹⁵

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Berman complains about the European Court of Human Rights' upholding Turkish 'restrictive governmental acts . . . limiting religion to a "respectable place"'. It is too easy, however, to criticize an international court of human rights without taking into account local democracy and the margin of appreciation that it requires from an international institution.

The issue for America, Europe, India, and possibly the Middle East is how to fashion a constitutional democracy that does not silence altogether the voice of religion, but listens to it and respects it at its right level. This is the central worry of lawyers and philosophers across the globe. But there is no trace of the democratic problem in Berman's excursus. One may at this point paraphrase the audience of Bataille as 'one cannot tell whether the [writer] is a perfidious anti-democrat or if he is defending a personal conception of an ideal democracy'.

Flirting with the idea of the sacred conspiracy, an irrational and emotional reaction to those conservative forces that aim at the consolidation of social orders may at times display some distrust for the ability of human rationality to devise democratic institutions that will resist and combat negative influences. But this may not be entirely alien to the inclination of international lawyers to always leave out of the frame democracy. Perhaps this is because democracy is the ultimate test for international law to be law rather than a convoluted set of political and sociological observations.

5. CONCLUSION: SECULAR LAW AND ITS *TELOS*

It is important at this conclusive point to come to the rescue of secular law against Berman's suggestion that 'law cannot protect us from the contagiousness of the sacred, for it is simply one more player in the drama'. The tragedy one immediately thinks about is that of *Antigone*, in which the law-giving dictator, Creon, prohibits the burial of *Antigone's* brother, thereby violating the city's religious norms. The tragedy in this case is given by the confrontation between law and religion, each represented as incapable of compromise. Contemporary debates resemble to a certain extent that situation in so far as religion is squarely opposed to secular institutions or is portrayed as being incompatible with them. Both in *Antigone* and in contemporary debates, however, the problem is that law is portrayed as one more player in the drama, one ideological position that is incapable of reasonable compromise. Here lies what could be seen as a limit of the conception of law in Berman's account as well as in Greek tragedy. In the latter, in fact, that portrayal is deliberately fictional and exaggerated, while, in Berman, it seems as if law is genuinely conceived as lacking any clear purpose, or, one may say fancifully, as lacking *telos*.

Berman's self-defeating understanding of law (and international law in particular) comes from the various points raised before. To begin with, the ambiguous relation between religion and nationalism depicted by Berman pits one against another two ideological sets of beliefs that resemble each other more than they differ: identity-based religion is very close to identity-based nationalism. The same point can be raised concerning the relationship between religion and the secular, where both are ideological sets of beliefs; they are, moreover, deeply intertwined as long as the secular is defined as the absence of religion. Within this mould, secularization as understood by Berman maps the degree to which religion retreats or transfers into the secular. Secularism, however, does not have to be understood as a mere absence: the quiet or violent waning of religion from the public sphere. To the contrary, secularism can be understood as a complex set of positive values that attempt to bridge the gap

between religious and non-religious people in an effort to build a regime in which everyone can feel respected and represented. That constitutional regime is secular in a non-ideological way, at least in so far as it attempts to accommodate religious and non-religious world-views. Within such a regime, secular law has the point of constituting a common framework for religious and non-religious people in order to avoid major social conflicts.

A secular age is not an age in which religion has disappeared altogether, although its place in society has changed and it no longer provides the ultimate source of authority and the ultimate benchmark for right behaviour. Nowadays, it is religion that has become just another player, when it used to be the supreme framework. That supreme framework has been supplanted by a constitutional framework, in which the sovereign works according to the rules of democracy. At a national level, democracy is the rule of the game and, within this game, religion can only be one player amongst others for the simple reason that some players speak in a religious voice and some others speak in a non-religious voice, and religion cannot be considered as the minimum common denominator anymore.

The minimum common denominator in a constitutional democracy is represented by secular law, whose *telos* is to speak with one voice in order to deal constructively with social conflicts either by foreseeing them or by settling them. Needless to say, law, like any other social tool that is rooted in a community, cannot be purely neutral, but it can strive to be equidistant and that is the best understanding of secularism that we can have. Secularism today should no longer be understood as the reverse coin of religion, but should be understood instead as a constitutional doctrine that militates in favour of the maximization of social and cultural diversity within a unified legal framework.

At the international level, things become more interesting, since religion – Islam, for example – regards the global arena as less well shaped in legal terms and therefore more penetrable. Regrettably, the wide variety of constitutional regimes in the world is much less likely to converge on a default secular position. The reason for this is to be found in the fact that the West has been through the emancipation of the Enlightenment, with the crisis that it has entailed. Parts of the Eastern world are still in the grips of horrible dictatorships that have prevented any emancipation from coming true. Ironically, the West has sold its soul to those dictators in exchange for the promise of a secular rule, as in the case of Saddam's Iraq or the Assad family in Syria. The type of secular rule they imposed with force is of the pure ideological type and has no real rational justification. Moreover, secular rule has been imposed by the elite at the expense of democratic reforms. International law has a difficult task and has to raise its game in order to perform it. It must be able to create a secular international framework within which different democratic voices will be heard.

The values of the radical Enlightenment reiterated by the French Revolution are more important than ever. Freedom, equality, and solidarity can only thrive in democracies under the rule of secular law. Religion can certainly play a role in those democracies but it necessarily has to be a role as a player amongst others, where religious and non-religious voices cohabit and communicate. Instead of identity, we must absolutely insist on the protection of diversity of the religious and non-religious type.