VV. AA. (Luca Pietro Vanoni, Andrea Cesarini, Federico Colombo, Alessandro Negri, Tania Pagotto, Greta Pavesi, Giada Ragone)

**The spatial ramifications of religion:
new and traditional legal challenges**

Papers presented at the panel "*The spatial ramifications of religion: new and traditional legal challenges* " held at the Annual Conference 2022 of EuARe (European Academy of Religion), which took place in Bologna from 20th to 23rd June 2022 and was organised by FSCIRE.
Papers selected by the organizing Committee.

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Interventi selezionati a cura del Comitato organizzativo.

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**The New (Public?) Space of Social Media and Religious Factor:
the case of Artistic Freedom**

SUMMARY: 1. Social Media: Public or Private spaces? - 2. Religion and
Contemporary Art: a Legal Perspective - 3. Law & Religion in Social Media: which
type of Neutrality?

1 - Social Media: Public or Private spaces?

The concept of public space has inevitably evolved over time. Max Weber
in 1921 defined it as "the space that is presented or opened to every
individual regardless of culture, religion, and even social status"[108].
Almost ten years ago Silvio Ferrari distinguished public space into
'common space', the physical space in which people must enter to be able
to satisfy their basic needs, in which they carry out their daily lives;
'political space', that of debate and discussion, in which public debate
takes shape; 'institutional space', in which choices are made that are
binding for all, the place of decisions[109].

Well, today it seems to me that the social media space is close to
taking all three of these forms. Although not physical, it is certainly the
place where users access (in some cases necessarily) to express their needs
and, ultimately, their personalities; it is equally certainly a space for
political discussion and debate, so much so that, increasingly, the daily
political agenda is dictated by the most successful posts on social
networks. It is not yet, but I believe it will soon become, an institutional
space. We already know of examples of direct democracy on the web,
aimed at selecting candidates or indicating to political parties the

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[108] **M. WEBER**, *City* [1921], Free Press, Glencoe, 1958. Recently, **M.Z. PAKÖZ, C.
SÖZER, A. DOĞAN**, *Changing perceptions and usage of public and pseudo-public spaces in the
post-pandemic city: the case of Istanbul*, in *Urban Design International*, no. 27, 2022 p. 65,
collected some of the most popular definitions of public space.

[109] **S. FERRARI**, *Diritto, religione e spazio pubblico*, in *Rivista di filosofia del diritto*, 2013,
now in C. CIANITTO, A. FERRARI, D. MILANI, A. TIRA (eds.), *Scritti. Percorsi di libertà religiosa
per una società plurale*, il Mulino, Bologna, 2022, pp. 259-261.

positions, on specific issues, of their electoral base or members. It is not impossible to imagine, therefore, public institutions consulting web users before taking decisions that are binding for all.

With the digitalization of society, the function of public space has been privatized and the character of public space has changed. The difference between public and private space has become increasingly ambiguous and the pandemic could only accelerate this process. It could even argue for the end of the era of public space.

US Supreme Court Justice Kennedy, in *Packingham v. North Carolina*, stated that "while in the past there may have been difficulty in identifying the most important places for the exchange of views, today the answer is clear. It is cyberspace in general […], and social media in particular"[110]. From a legal point of view, that ruling breathed new life into the application of state action doctrine to internet platforms: "to foreclose access to social media altogether is to prevent the user from engaging in the legitimate exercise of First Amendment rights"[111].

What seems certain to me, in any case, is that, regardless of the legal nature of the space in which they are posted, contents on social networks immediately and inevitably take on public relevance, becoming accessible to a more or less vast number of users. Research already conducted in 2013, again almost 10 years ago, on Facebook (today it seems a bit anachronistic), revealed that users entered social media with the assumption that the information posted there was available to a wide and ill-defined audience, with no clear boundaries[112].

As places where individual personality develops, one of the most classic and traditional expressions of personality, religion, finds its place too. And, of course, a system of Law & Religion also emerges here. For if social media, as social formations, have their own regulations, we know that not only *ubi societas ibi ius*, but also *ubi societas ibi* Law & Religion. Since time immemorial, every legal system has been concerned with defining its relationship with the religious factor, and it is now a question of understanding what that is for social networks.

2 - Religion and Contemporary Art: a Legal Perspective

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[110] See *Packingham v. North Carolina*, 582. U.S. (2017), Opinion of the Court, II, pp. 4-5.

[111] See *Packingham v. North Carolina*, 582. U.S. (2017), Opinion of the Court, III, p. 8.

[112] **J. BURKELL, A. FORTIER, L. WONG, J.L. SIMPSON**, *Facebook: Public Space or Private Space?*, in *Information, Communication & Society*, no. 81, 2013, p. 10.

To understand this or try to sketch out an answer, we will use the example of art, another expression of personality that has found a natural new outlet in social media. Like every manifestation of thought, in fact, art is now an integral part of the 'infosphere'[113] and contributes daily to writing the pages of the 'hyper-history' into which Western societies have passed since most of their resources, as well as essential data, are no longer substantiated in material goods, but in processes and objects that are now devoid of any physical connotation[114]. The works of art themselves, therefore, which had already become abstract and dematerialized, have undergone a further dematerialization, knowing the new modes of dissemination guaranteed by the online.

The link between art and religion, historically almost inseparable, did not erode with secularisation, but the post-secular age has ended up restoring an art scene in which the religious factor and its symbols have returned to play a central role, albeit with new meanings and modes of expression[115]. In Italy, the debate on the relationship between art and religion has become highly topical again in recent years, and witness to this is the publication in Italian, in 2021, of James Elkins' classic work entitled "On the Strange Place of Religion in Contemporary Art"[116]. Elkins notes how there seems to be no longer any space for traditional religious art, but rather desecrating, almost anti-religious, or a-religious works, in which symbols are used as a reference to the broader experience of the transcendent, or to the dimension of "vehicles of identity"[117] assumed by

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[113] In Italy, the most relevant scholar on the subject is **L. FLORIDI**, who in *La quarta rivoluzione*, Raffaello Cortina, Milan, 2017, pp. 44-45, defines the infosphere, at a minimum level, "the entire informational environment consisting of all informational entities, their properties, interactions, processes and mutual relations [...]. At a maximum level, [...] a concept that can be used as a synonym for reality, where we interpret the latter in informational terms.

[114] See **L. FLORIDI**, cit., p. 4, 55.

[115] About the relationship between contemporary art and religion, see **I. BARGNA**, *Forme del sacro e arte contemporanea fra materiale e immateriale*, in *Antropologia*, vol. 6, n. 1, aprile 2019, **M. SAMMICHELI**, *Disegnare il sacro*, Rubbettino, Soveria Mannelli, 2018; **A. ROSEN**, *Art + religion in the 21st century*, Thames & Hudson, London, 2017; **A. DALL'ASTA**, *Eclissi. Oltre il divorzio tra arte e Chiesa*, Edizioni San Paolo, Cinisello Balsamo, 2016.

[116] In Italian, **J. ELKINS**, *Lo strano posto della religione nell'arte contemporanea* [2004], Johan & Levi, Monza, 2022.

[117] **C. LUZZATI**, *La non sempre garbata violenza del proselitismo e della propaganda*, in *Quaderni di Diritto e Politica Ecclesiastica*, no. 2, 2019, p. 236.