Religion interacts with law and constitutionalism in *cultural* as well as *structural* ways. One set of questions asks about the cultural connection between religion and governance. The symbols, rituals, worldviews, language, and ways of thinking that form the core of a religion create a kind of culture that then shapes the way people deal with authority and power. Cultural issues focus on the *legitimation* of political order.

*Structural* questions deal with the way individuals and groups within a religious tradition organize and govern themselves. Over time religious traditions develop institutions for handling questions of authority and power among their members as well as to address the problem of passing on their religious culture to the next generation. Such religious structures then interact with other institutions in the society, such as family, economy, and politics.

**The cultural question of legitimation**

In relatively homogeneous societies a single religious culture has tended to be the source for justifying whatever pattern of governance exists in all the spheres of life, both domestic and common. Models of patriarchal and family order have generally legitimated political order. For example, the idea of the kingship of God both sustains and critiques, from a higher level, the kingships of the world. Traditional religion has generally been suspicious of or resistant to the rise of democratic constitutionalism because it interrupts and breaks down this unifying family model for governance.

The work of cultural legitimation occurs in two ways. One is through the fostering of a "civil religion" informed by particular religious conceptions. Songs, commemorations, hallowed places, and holidays provide a kind of sacred world shaping public life. These can function to absolutize the nation or the state. They can also function to call governments and nations to a higher standard of justice. The question here is what role particular religions should play in fostering a "civil religion" in the positive sense. How can this civil religion recognize the religious plurality of the nation? How can it reinforce the critical elements that might exist in the general political culture?

The second way this cultural legitimation occurs is through the impact of the religion’s own cultic life on its members. What kind of models or paradigms of authority and power are rehearsed in its worship or devotional life? What models of civil governance are reinforced or undermined by these worship patterns? In most churches this is the question of how people can worship as monarchists and function during the rest of the week as democratic citizens. It is a question, often posed in terms of women’s rights, of how to relate largely patriarchal religion to democratic culture.

In both these ways we have to ask what resources religious cultures might have for legitimating constitutional democracies rooted in conceptions of human rights. Traditional religious culture emphasizes
people’s fundamental identities as children, parents, and siblings. Is there any room for concepts of mature citizenship in these cultures? Is there any place for a conception of law even beyond the will of the father or mother? How do you legitimate a constitution rooted in conceptions of human rights for individuals within a religious tradition of obedience to a God expressed as lord, king, or almighty father?

**Religious organization and constitutional order**

The way religions are organized shapes their interaction with government, law, and public life. While these organizational patterns are quite varied, and some religions have no discernible organizational structure at all, I think it is helpful to categorize them in three types – communal, institutional, and associational. A *communal* form of religious organization makes only slight distinction between "religion," family, governance, economics, and science. There is little differentiation among these aspects of life. The distinction of public and private yields to the all-embracing idea of community. Moreover, there is essentially no religious pluralism. The life of the community is integrated around what outsiders call their "religion."

*Institutional* forms of religion depend on some degree of differentiation between religion, state, family, and economy, but the main institutions, especially the state, safeguard, protect, and advance the religion. This has been typical of European religious forms in the past and survives in some ways in contemporary South Africa and elsewhere. It can tolerate other religions but not as official or state-supported institutions.

The *associational* pattern emerges when religion is separated from the state and other coercive structures. It rests on the voluntary commitment and effort of the individuals and groups that make up that religion. This approach both assumes and creates religious pluralism, as people create differing religious associations according to their beliefs, interests, languages, customs, and ethical values.

Depending on which of these organizational forms a religious culture takes on, it frames the questions of religious freedom and governmental relations to religion differently. In *communal* interpretations the rights attach to the group, not the individual. The problem here is whether the governance patterns of the commune contradict the imperatives of the constitution, as with rights of women or property rights in land. Does freedom of religion mean the freedom of a whole community to pursue its traditional way of life?

*Institutional* forms highlight the rights of the institution but also the rights of individuals as members of that institution. However, they still seek governmental preferences and privileges, especially in matters of education, social service, and family. The problem here is whether the religious institution’s claims on its members clash with citizenship rights. In addition, does government support inevitably carry with it discrimination against religions that cannot qualify for such support?

*Associational* religions highlight the individuals who are members of the association. Democratic constitutions tend to foster associational forms of religion. The problem here is whether in doing so they force religion into a private sphere of individual interest and cut it off from public life altogether.

**Relationships among religions, governments, and public life**

The differing cultural impacts of religion and the various forms of organization then shape various relationships among religions, between them and government, and between them in the public sphere generally.

This movement toward associational patterns in religion fits well with religious pluralism as long as the religions all adopt an associational self-understanding. Rather than orienting themselves to the unity typical of communal life or to dependence on the state in institutional life, they focus on the recruitment of
individuals into self-governing associations.

In each of these approaches the notion of "separation of religion and government" takes on different meanings. In the first it tends to support the communal society’s claims to autonomy and self-governance. In the second, it tends to support the institution’s claims to public space and expression. In the third, it tends to support the rights of the individual to create or join any association he or she wishes while at the same time making religion a rather private matter.

These three types all exist in most societies. In South Africa communal forms are still strong and are intertwined with claims for communal rights, whether in the form of recognition of traditional leaders and councils, of land claims, or marriage and family law. A constitutional democratic order has to ask how religions are going to develop the associational patterns congruent with democratic constitutionalism without losing the positive ethical contributions of religion to public life.

This pluralism and associationalism also fosters the differentiation of civil society from government as well as from communal groupings based largely on ancestry. Associationalism also means there will be a variety of publics independent from each other and from governmental bodies. Thus, the pluralism of associational religion can help resist tendencies to governmental absolutism and governmental domination of the public sphere. However, this associationalism can also become sheer privatism. The question here is how to deal with the tendency of associational religion to foster a mere consumerism in religion, indifferent to public life.

The development of a pluralistic civil society composed of many publics challenges communal and institutional religions, but these can also convey into public life a sense of the common good often lacking in the concerns for individual interest in religious associationalism. How can this heritage of holistic thinking be mediated in a pluralistic democracy? How can the language of religious discourse be mediated into that of civil discourse? Reflection on the way the Truth and Reconciliation Commission often blended religious, legal, and general public language can help us explore the negative and positive aspects of this problem. In this regard we have to ask how religious traditions, together and individually, can cultivate a genuine civility of discourse without surrendering their particular claims and insights to a narrow secularism.

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