CHAPTER THREE

RELIGION AND ORDER:
PHILOSOPHICAL REFLECTIONS FROM AUGUSTINE TO HEGEL ON THE SPIRITUAL SOURCES OF LAW AND POLITICS

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Die Religion ist der Ort, wo ein Volk sich die Definition dessen gibt, was es für das Wahre hält.
(G.W.F. Hegel)1

1. INTRODUCTION

The religious dimension of politics and the political dimension of religion are topics that are increasingly being (re)discovered and debated nowadays. Not since the end of the 16th and 17th century’s religious wars has religion been debated so fiercely and intensely as nowadays, especially since 9/11. Urgent questions have increasingly been posed on the relation between state and religion, as well as on the reciprocity between law and religion. These questions do not only concern how politics and religion should be kept apart, or church and state separated, but are also on how state and religion may in some way expect more of each other, or may even depend on one another. Modern, secular and liberal democracies live of preconditions that these states cannot account for themselves:2 they live of a moral and spiritual ‘infrastructure’ that forms the backbone of law and order in society. It is only from this (moral)

2 This famous dictum from Ernst-Wolfgang Böckenförde is quoted from his essay “Die Entstehung des Staates als Vorgang der Säkularisation”, in: E.-W. Böckenförde, Recht, Staat, Freiheit. Studien zur Rechtsphilosophie, Staatstheorie und Verfassungsgeschichte, Frankfurt am Main: Suhrkamp 1991, p. 112, which reads as follows: “Der freiheitliche, säkularisierte Staat lebt von Voraussetzungen, die er selbst nicht garantieren kann”.


viewpoint that law, politics and the state can be experienced as and deemed legitimate. Under the present, “post-secularized” circumstances, characterized by an increasing religious ‘pluralisation’ and fragmentation, the modern state and the law are faced with serious legitimization deficits: the withering away of traditional religiosity, a lack of a binding and bonding common ideal or belief, an eclipse of the idea of a common good; all are more or less necessary for some kind of legitimization of political power and legal force.

Modern, liberal constitutional ideals (such as the separation of powers, the rule of law, and human rights) are not unconditionally self-supporting. They are ‘handicapped’ with a lack of articulation, that is: they cannot articulate the moral and spiritual sources from which they derive these high constitutional values. Is respect for human rights enough for legal-political legitimacy, or does this respect itself depend on or require something deeper and more rooted in the mindset of citizens: a certain order in the ‘soul’, or certain ‘habits of the heart’? How can this order be located and articulated? How can this order be analyzed and to what extent can it be made fertile for the functioning of the moral infrastructure of modern societies? Morality is not only a rational business. Man’s morality is rooted in his religiousness. Religion equips man with the motivation and the grounds to be moral: the ultimate ground lies in the ‘roots of his soul’, “at the navel of his soul, at the place where his soul is linked to the cosmos”.

In the present contribution, I will try to reflect on exactly these sources of law and (public) morality, particularly within the scope of the spiritual, religious dimension of man. In order to succeed, I intend to sketch

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6 Of course morality can and should be studied, systemized and its contents rationally defended in philosophical discourse, but why we should be moral at all is not just a question of rationality. See for a prominent Dutch defender of the independence of morality from religion: Paul Cliteur, “Liberal Globalism: A Defence”, in: Eva Nieuwenhuys, ed., Neo-liberal Globalism and Social Sustainable Globalisation, Leiden/Boston: Brill 2006, pp. 15–39.