

“Rendering unto Caesar and Rendering unto God” in Religious Pluralism.

Tensions over Religious Property Restitution in Post-Communist Romania

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Abstract: In this essay I address the issue of religious property restitution in Romania after the fall of communism. I aim to show that the way in which the Romanian state sought to solve patrimonial conflicts over religious property privileges the Romanian Orthodox Church in ways that endanger religious pluralism. In Romania, religious property restitution was a process through which the Orthodox Church was socially constructed as the “rightful” and legitimate recipient of state support. After 1989, there was a two decades long conflict between the Orthodox Church and the Greek-Catholic Church, regarding the latter’s places of worship. The communist regime confiscated Greek-Catholic property when it came to power and gave it to the Orthodox Church. Now, the Greek-Catholic Church asks for *restitutio in integrum*, opposed by both the Orthodox Church and successive Romanian governments. I analyze the state policy of religious property restitution in order to show that the Orthodox Church is designated as the rightful and most deserving religious actor. I conclude by raising questions on the delicate relationship between religious pluralism and the status of traditional dominant religion in recent democracies.

Pluralism is a central concept of both liberal democratic theory and market economy. From the political perspective, pluralism allows representation of multiple interests that compete for state recognition. From an economic perspective, pluralism encourages private initiative, competition, and thus leads to free market economy, and, implicitly, growth. From a religious perspective, both angles are combined in order to assert that not only is religious pluralism a key feature of democracy, but it is also one of the factors causing a vibrant religious life, through competitive provision of services. Nevertheless, implementing religious pluralism can be problematic in societies that do not have a pluralistic tradition. The story presented in this essay opens up the discussion on how to reconcile religious pluralism with historical traditions of dominant churches.

1. Creating identity through property restitution

In this section, I briefly present theoretical knowledge on the ways in which identity can be constructed through public policy mechanisms. Constructivism contends that discursive formations exist simultaneously within the society as products of identity assertion (Hopf, 2002). Identities are constructed relationally, in the interplay between the Self and the Other (Neumann, 1999, Said, 1978). William Connolly (1991) believes that constructions of otherness suggest only a few possibilities of dealing with the other, namely "conquer, convert, or marginalize the external other, and neutralize the internal other who interrogate

them" (Connolly, 1991: 45). Constructions of "self" are operated by placing the "other" in positions that can be understood, changed, and controlled, while justifying the "self" position as ontologically neutral.

In a democracy, personal and collective identities are mediated officially through the state (Connolly, 1991: 198). The state has at its disposal mechanisms for influencing identity constructions, and one of those mechanisms is public policy. Who gets what, how and when is a matter of what target groups are constructed as more deserving.

Schneider and Ingram (1997) propose a model of public policy making that draws from critical theory. Their thesis is that "policy designs have significant consequences for democracy" (67). Therefore, if public policy can construct privileged target populations, then, in the context of this essay, property restitution is also a mechanism through which "rightful" owners can be identified.

According to Verdery (2003) private property, is "a "western native" category, a symbol, a set of relations and a process" (15). Politically, property is the expression of a "Lockean" relationship between citizens and the state, a "form of subjection to which [...] entitlements were central" (16).

Initially, the establishment of private property was regarded as return to normality, although Verdery argues that, in fact, it was a whole new process. *Restitutio in integrum* was heavily advocated but if property is to be restored to the rightful owners, how far back in time should one go? Another problematic point is the framing of the discussion in terms of rights. Property as actual possession of assets is a mere economic status; restoration of property rights suggests a political process of entitlement: "culturally speaking, property specifies what things have what kind of value and who counts as a person, and it then positions these in wider sets of social relations" (Verdery, 2003: 19).

Laura Jensen (2003) theorizes about entitlements in American social policy. She asserts that the privileged position of the Civil War veterans is an intentional construction of a deserving set of people. Historically, for Jensen, the American state has not been able to incorporate its citizens broadly and equitably. Laws in general and entitlements in particular, because of their embedded eligibility criteria, affect modes of identity of individuals and groups. Through their powerful legal content, entitlements "play a central role in the development and legitimation of nation-states" (Jensen, 2003: 15).

A combined reading of both Verdery and Jensen leads to the conclusion that restituting private property is a constitutive process. Religious property is part of the same process. It is important to investigate how successive Romanian governments addressed the issue, in the context of constant international pressure for religious pluralism and the opening up of the religious space.

2. Places of worship and their "rightful" owners

The starting point for understanding the context of property restitution policies is the communist outlawing of private property. Through the decree 176 of 1948, the communist regime also confiscated the property of churches,

denominations, congregations and other individuals and communities that were fulfilling an educational function.

The communist regime tolerated the Orthodox Church, while the Greek-Catholic Church was outlawed because of its direct relationship with the Catholic "West". Consequently, all Greek-Catholic property was confiscated and then transferred to the Orthodox Church, and Romania broke relationships with the Holy See.¹

The communist regime believed that controlling one institution would be easier than several (Tismaneanu, 2006).² In exchange for the communist regime recognizing its dominant status within the Romanian society, members of the Orthodox Church collaborated with the regime.

Early in the 1990s, the government recognized that there might be a conflict between the Orthodox and the Greek-Catholic Churches, but it did not assume responsibility for resolving it. Rather, it encouraged the two churches to engage in dialogue to resolve their litigations (Mediauno, 1993).

In some cases, Orthodox clergy recognized the right of the Greek-Catholic Church to receive churches back. Archbishop Corneanu of Timisoara pledged support for creating friendly relations between the two churches (Lazu, 2002). In cities or villages in which there was more than one church, and at least of one them used to be the property of the Greek-Catholics, Corneanu attempted to give one church back to the Catholics, only to be proscribed from doing so by the Orthodox leadership. In situations where only one church existed, Corneanu proposed a principle according to which both denominations worshipped in the same church, but at different times. This principle was also adopted in other areas, but continued to be perceived as illegitimate by most Orthodox clergy (Lazu, 2002).

In other cases, Greek-Catholics mobilized and took over some churches by force (Ionescu, 1991). In Cluj for instance, the proportion of Orthodox and Greek-Catholic Churches is similar, but the former still had full control of both denominations' buildings. The Greek-Catholics held their services in a public square. When they occupied a church in Cluj, the Orthodox organized marches of protest. According to the 1992 Romanian Census, the Greek-Catholic Church had a little over 200,000 believers, or 1% of the country's population. It also had 2 cathedrals and 212 churches. Proportionality of support thus became the leading principle promoted by the Orthodox, through which restitution was opposed.

In 2002, the government classified the patrimonial conflict as a non-issue and stated that all the possessions confiscated by the communist regime belonging to churches would be given back to them, except those churches and their possessions that were in use (by the Orthodox Church) at the time when the law passed.

¹ The breaking of diplomatic agreements between Romania and the Vatican took place on July 17th, 1948. Several Romanian communist leaders denounced the Holy See as promoter of Western Imperialism.

² Vladimir Tismaneanu is a Romanian political scientist and a professor at the University of Maryland. The Romanian government commissioned him to produce a report on the features of Romanian communism and its relationship with various members of civil society.

The Romanian Orthodox Church argues that the Greek-Catholic Churches were not confiscated by the Romanian communist state, but rather given directly to the Orthodox Church, so that the claim to restore property rights over previously confiscated goods does not apply (Candela Moldovei, 1997). Additionally, many of the Greek-Catholic confidants and clergy converted to Orthodoxy during communism. According to Orthodox doctrine, the churches do not belong to either the state or the church, but to the community of believers who are now Orthodox themselves (Candela Moldovei, 1997).

The Greek-Catholic argument was that the churches were built by the Catholic Church and taken away by the communist regime, so the Catholic Church is entitled to full restoration of its property rights. The pope made an appeal to the Romanian government to proceed to *restitutio in integrum*, but the Romanian government denied his claim (Catholica, 2001).

While the Romanian Government asserted the need to restore property rights, it also expressed reluctance about how this could be done. Disagreement within the political elite was not uncommon. Prime-minister Nastase affirmed in 2001 that restoration of property rights is a principle that serves both the Orthodox and the Greek-Catholic Church. However, the Romanian president Ion Iliescu believed differently; he argued that because many Greek-Catholics converted to Orthodoxy, there was no need for a *restitutio in integrum* (Mediauno, 2002).

Even in the few cases when the courts granted the Greek-Catholic Church full ownership over its places of worship, the state refused to enforce the decision (Mediauno, 2002). Only in 2005 did the Greek-Catholic believers managed to get most of their churches back.

Although the restoration of religious property rights could not be avoided, the Romanian Orthodox Church succeeded to consolidate its status in the much delayed law on religious freedom and the general regime of religious denominations, number 489/2006. Until the passing of the new law, religion was regulated by the communist decree of 1948, marginally amended by the 1991 Constitution. There were many protests from both national and international actors, criticizing it for being anti-democratic. Nationally, every single religious organization and church, except for the Romanian Orthodox Church, protested against it. Internationally, both the OSCE Helsinki Commission and the Center for Religion and Public Policy in Washington, DC, voiced criticism.

This law does not grant the Romanian Orthodox Church the status of national church. However the formulation in the promulgated law recognizes the important role of the Romanian Orthodox Church and other religions that are recognized in national history and in Romanian society. The law has been criticized on the following accounts: overregulation of the religious space, restrictive legislation for founding religious associations, cults or groups; and intrusive relationship between church and state. According to the new law, in order to create a religious organization one needs 300 members (as opposed to 3 for any other non governmental organization). New religions must have a starting membership of 0.1% of the population, all in original signature lists, and

the proof of uninterrupted legal functioning as a religious association on Romanian territory for at least 11 years.

3. Privilege, discrimination and religious pluralism

The story presented above encapsulates the very importance of context in adopting and implementing democratic principles. It is obvious that both religious property restitution and the general law on religion in Romania privilege the Romanian Orthodox Church. In Romania, democratization brought about a series of principles, among which religious freedom and pluralism rank high, that are in tension with the historically constructed relationship between church and state. Privileging the Romanian Orthodox Church through the legal mechanisms of public policy and public financing embodying the principle of proportionality is also way in which the state shows its support for Orthodox identity. In other words, the state constructs the Orthodox Church and its adherents as the main and most important actors in the religious space, one that should both benefit from financial support and be shielded from the potentially harmful influences of other denominations. The religious market in Romania is quasi monopolistic, and the Romanian state supports the dominating position of the Orthodox Church. The privileging of the Orthodox Church becomes part and parcel of the process of constructing identity. Indeed, one of the most popular definitions of Romanian identity equals Romanian-ness with Orthodoxy.

The relationship between church and state and its regulation in Romania is under opposite pressures. On the one hand, the Orthodox Church gathers up almost 85% of the population, and asks for a privileged status according to its representation within the society. On the other hand, democratization and European integration entails the adoption of pluralism and in fact of multiculturalism. Consequently, public policy as a tool for creating deservingness also becomes subject to different pressures, and striking a balance between the equal representation of interests required by pluralistic democracy and privileging historically significant sources of stability can be difficult.

I end this essay by asking several questions that do not have easy answers and are raised by the story presented here. First, *if religious pluralism is an essential characteristic of a democratic system, then how can it be reconciled with histories of dominant religions?* Second, research shows that even in religiously pluralistic democratic countries, such as the United States and Canada some denominations and religious traditions are hegemonical (Beaman, 2003). And so the question becomes *how equidistant a democratic state should be in relationship to the existing religions?* Third, given that religious identity is often employed as basis for national identity, *how can religious pluralism coexist with the politics of national identity?*

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