

European Diversity and Autonomy Papers
EDAP 03/2008

**“A Thousand Streams and Groves:”
Comments on Dr. Gierycz’s Paper
“United in Diversity”**

Peter R. Teachout



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Abstract

Gierycz argues provocatively in his paper that the identity of the European Union as reflected in its motto, “United in Diversity,” has been “derived” from the model offered by the Roman Catholic Church. His argument, however, is flawed in a number of key respects. Among other things, he ignores entirely the fact that the Catholic Church did not invent the wheel in this respect but modeled itself in turn on the earlier example of the Roman Empire. The impression he leaves of the ways in which the Church went about imposing its version of “unity in diversity” on the local cultures over which it came to exercise dominion, moreover, is highly misleading. A third problem is that he treats the terms “Catholic Church” and “Christian thought” as if they were interchangeable when their references are obviously not necessarily identical. There are also deep problems with Gierycz’s attempt to establish that Church-based moral norms are superior to those reflected in the European Charter of Fundamental Rights because, as he seeks to convince us, the former are grounded on the “rock” of “absolute” values while the latter are built upon the “sand” of shifting sociological opinion. These flaws diminish the value of what could have been an important contribution to our understanding of the extent to which the European Union should look to the experience of the Church in seeking to establish its own identity as a supranational institution “united in diversity.”

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Key words

United in Diversity - Catholic Church - European Charter of Fundamental Rights - Christian Thought - Roman Empire.

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Peter R. Teachout

1. Introduction

Dr. Gierycz argues in this paper that the “identity” of the European Union as reflected in its motto, “United in Diversity”, has been “derived from the ecclesial [sic] model,” in particular, from the model of the Roman Catholic Church.¹ The key feature of the Church’s experience in this respect, according to Gierycz, has been its success in finding ways to accommodate and embrace local cultural differences while adhering to a core set of shared values. Since that is the same challenge now facing the European Union, the European Union should be guided by the model offered by the Church. It is not just a matter of accidental similarity in organizational structure or experience in Gierycz’s view. The very vision of the European Union as a transcendent political community united in diversity has been “derived,” he insists, from the model offered by the Church.

This, in turn, has important implications for how the European Union approaches the task of finding appropriate accommodation between generally shared Community values on the one hand and the particular values reflected in the various constitutional cultures of the constituent member states on the other. Gierycz offers as an example the tension that exists between the relatively liberal values embodied in the European Charter of Fundamental Rights and the more conservative Catholic-Church-based values - values such as “protection of life from conception until natural death,” “protection of marriage perceived as a relationship between man and woman,” and “protection of family”² - that one finds reflected in Polish constitutional culture. In the event of a conflict between these, which of these value systems ought to prevail? Gierycz maintains that Poland’s church-based norms are superior to those of the European Union because the church-based norms

¹ Michał Gierycz, “‘United in Diversity’: The Church’s Experience and the European Union’s Identity Motto” 2 *European Diversity and Autonomy Papers - EDAP* (2008), at <http://www.eurac.edu/edap>, 5. “[T]he EU derives the definition of its identity - whose ultimate expression is the EU motto - from European experience, which seems to be comprehensible with reference to the experience of the *Ecclesia*.” *Ibid.*, 6. “[U]nity in diversity is uniquely Catholic.” *Ibid.*, 8.

² “The church in Poland has been, in particular, interested in guaranteeing inviolability in the Union of basic values that form, as Archbishop Muszynski put it, part and parcel of culture and identity of the Polish nation.¹ At stake have been the protection of life from conception until natural death, protection of marriage perceived as a relationship between man and woman, and the protection of family.” *Ibid.*, 34.

are grounded on the “rock” of absolute values while those embodied in the Charter of Fundamental Rights rest upon the shifting “sand” of popular opinion.³ Consequently, the “mere Charter of Fundamental Rights” should not “be the basis of moral norms” for the European Union⁴ since the rights embodied there are simply reflections of transient social and political values. Indeed, because of this lack of a secure ethical foundation, Gierycz predicts, the entire European experiment is probably doomed to failure.⁵

The position Gierycz carves out in this paper is a fairly radical one, almost certain to provoke controversy and disagreement. That does not mean that his paper serves no valuable function - indeed, the opposite. In the first place, putting aside for a moment Gierycz’s more controversial claims, his paper does help to correct - or at least to complicate - the view held in some circles that “Christian thought and European integration are contained in two totally separate spaces.”⁶ Gierycz demonstrates here that there is substantial overlap between the two spheres. The vision expressed by the motto of the European Union, United in Diversity, he shows, has precedential underpinnings in the experience of the Roman Catholic Church. Moreover, he offers an interesting explanation of how Church values and policies are passed on to secular institutions through what he calls “Transmission Channels”⁷ which allow the religious values and ideas to undergo a kind of secular transformation while maintaining their essential character. More generally, his paper serves to remind us of the extent to which Christian thought and practice underlie and continue to influence the development of European civilization. In these several respects, Gierycz’s paper represents a potentially important contribution to the existing literature on the unique character of the European Union. At the very least, the provocative claims he makes here are likely to spark discussion and debate.

The value of Gierycz’s contribution is diminished, however, by a number of serious and often puzzling flaws. His argument is open to at least five major criticisms. First, in claiming that the Catholic Church provides the original model for a European community based on a vision of unity in diversity, Gierycz adopts a curiously myopic view of European history. Such a claim ignores the fact that the Church was built on the ruins of the Roman Empire and that, in establishing and expanding its dominion, the Church adopted key

³ “An important difference between how unity in diversity is perceived from the normative viewpoint and in the ecclesial [sic] space lies in the way unity foundations are perceived. ... The result of replacing a metaphysics of values [the Church’s approach] with a sociology of values [the European Union’s approach] resembles, to use a Biblical metaphor, building on sand rather than on rock.” *Ibid.*, 24; see also *ibid.*, 22.

⁴ *Ibid.*, 41 (quoting Daniel Cohn-Bendit) (emphasis supplied).

⁵ *Ibid.*, 41.

⁶ *Ibid.*, 38 (quoting Joseph H.H. Weiler).

⁷ *Ibid.*, 25-36.

aspects of organizational structure and vision from the earlier Roman model. Second, the picture Gierycz paints of the ways in which the Catholic Church went about implementing its vision of unity in diversity does not accurately reflect the historical reality. It is highly sentimental and misleading. Third, throughout the paper, Gierycz consistently convolutes “Christian thought” with “Catholic Church doctrine” as if two terms were synonymous, when in fact their references are not at all identical. Fourth, Gierycz fails to make clear why the values embodied in Catholic Church doctrine should be regarded as specially deserving of our reverence or respect. Simply calling them “absolute” does not help. Indeed, it underscores the poverty of talking about values in the abstract without inquiring into the impact of their application to actual human life. Fifth, in dismissing as transient and insubstantial the values embodied in the European Charter of Fundamental Rights, Gierycz shows inadequate appreciation for the importance and staying power of values that have been gradually forged over time out of repeated encounters with experience. Let us consider each of these criticisms in turn.

2. The Catholic Church as the Original Model for “United in Diversity”?

Gierycz’s main argument in this paper is that the vision of United in Diversity expressed by the motto of the European Union has been derived “from the ecclesial [*sic*] model”⁸ - by which he means, it becomes clear as he proceeds, the model represented by the Roman Catholic Church. The Church and its system of beliefs, he claims, provides “the ideological foundation that brought the notion of unity in diversity to the heart of European culture.”⁹ The chief problem with this argument is that it ignores the fact that the vision of a transcendent political or religious community “united in diversity” was not original with the Church. As anyone familiar with European history knows, the Church, at least in this particular respect, modeled itself on the example provided by its predecessor institution: the Roman Empire. When we say that the Church was “built upon the ruins of the Roman Empire,” we mean more than simply that Christian churches were physically built on the ruins of the old Roman temples; we mean that the Roman Catholic Church, in gradually expanding its dominion, adopted an approach modeled upon the earlier Roman experience.

Indeed, the Romans were, if anything, much better at it: much more tolerant of local diversity, much more successful at finding ways of accommodating local differences within a single unifying political community. One recalls the famous passage in Edward Gibbon’s *Decline and Fall of the*

⁸ *Ibid.*, 5.

⁹ *Ibid.*, 29.

Roman Empire where Gibbon is describing the genius of the Romans, particularly under the Antonines, for achieving unity in diversity in the cultural and religious spheres through adherence to a policy of moderation and tolerance:

The deities of a thousand groves and a thousand streams possessed, in peace, their local and respective influence; nor could the Roman who deprecated the wrath of the Tiber deride the Egyptian who presented his offering to the beneficent genius of the Nile. The visible powers of Nature, the planets, and the elements, were the same throughout the universe. The invisible governors of the moral world were inevitably cast in a similar mould of fiction and allegory. Every virtue, and even vice, acquired its divine representative; every art and profession its patron, whose attributes, in the most distant ages and countries, were uniformly derived from the character of their votaries. ... Such was a mild spirit of antiquity, that the nations were less attentive to the difference, than to the resemblance of their religious worship.¹⁰

“The deities of a thousand groves and a thousand streams possessed, in peace, their local and respective influence.” This is not a description that could be fairly applied to the Europe that existed under the rule of the Catholic Church.

The great achievement of Rome under the Antonines, Gibbon reminds us, was that it found a way to harness the energy of the peoples who inhabited much of what is now modern Europe in the service of a sense of shared purpose while at the same time demonstrating remarkable tolerance for local cultural and religious differences. One gets no sense of this, however, from Gierycz’s paper. There is no recognition here of how the Church built upon the earlier experience of the Roman Empire. Indeed, there is no recognition that the Roman Empire ever existed. This is an inexplicable omission. If we want to understand where the vision of unity in diversity originated in the European experience, and understand accurately the lines of inheritance leading down to its adoption by the European Union today, the place to begin obviously is not with the Church but with Rome.

The first major respect in which Gierycz’s paper is defective, then, lies in its failure to recognize that, in embracing a vision of unity in diversity, the Church was not inventing the wheel but building upon an earlier model established by the Roman Empire.

¹⁰ Edward Gibbon, *The Decline and Fall of the Roman Empire*, Vol. 1 (Modern Library ed., New York, 1996), 26.

3. Implementing the Vision of Unity in Diversity: The Church's Approach

The second major respect in which Gierycz's paper is open to criticism lies in the uncritical - indeed, highly sentimental - picture he paints of the ways in which the Catholic Church went about realizing the vision of unity in diversity. From Gierycz's account, one might come away believing that the Church succeeded in bringing different subcultures worldwide into a single happy family of shared Christian value through the issuance of a few beneficent papal edicts. For evidence of the Church's achievement in this respect Gierycz relies primarily on quotations from the homilies of Pope Jean Paul II.¹¹ But that is to ignore the long, dark history of repression pursued by the Church as it went about expanding its dominion and imposing upon alien cultures the yoke of submission to Church doctrine. Yet there is not the slightest acknowledgment here of how, over many centuries, the Church stifled dissent (and art and music and imaginative literature) and discouraged meaningful expression of freedom of thought and belief.

Gierycz deals with this complication, to the extent he does so at all, by seeking to gloss over it with a veil of euphemism. He tells us at one point, for example, that "from its early times, the Church in a sense has 'affirmed' cultural diversity, forbidding only what has been contrary to its creed."¹² The qualifying phrase offers little reassurance however to anyone familiar with the actual history of Church expansion "from its early times." Beneath that seemingly innocuous phrase, "forbidding only what has been contrary to its creed," lies the entire Dark Ages.

In a similar vein, Gierycz asserts that, in implementing the idea of unity in diversity, the Church seeks simply "to bring Christ into life at every level," adding casually (with curious use of the passive voice) that of course "it also needs removing from local cultures everything that contradicts the Christian message, so that the distinctiveness and integrity of the Christian faith is not compromised in any way."¹³ This might seem innocuous enough so long as we are content to accept uncritically a benign and generous view of how "the Christian message" was extended and enforced throughout Europe. But we respond quite differently when we recall the actual history of Church expansion - when we recall how "anything" that "contradict[ed]" Church doctrine was in fact "removed" from local cultures not just during the early years of Church existence,¹⁴ but also later, during the Crusades, and the

¹¹ See, e.g., Gierycz, "'United in Diversity'...", 30-32.

¹² *Ibid.*, 9 (emphasis supplied).

¹³ *Ibid.*, (emphasis supplied).

¹⁴ For a description of the intolerant character of the early Christians, see Chapter 15 of Gibbon, *The Decline and Fall...*, 382-444.

Catholic re-conquest of Spain and the Spanish Inquisition, and the book burning and persecution of those who, like Galileo, argued that the earth revolved around the sun.

One has much the same reaction to Gierycz's later claim that "respect for and affirmation of diverse cultures becomes *conditio sine qua non* of preserving the identity of the whole community," insisting in the same breath that the Gospel "must be assimilated by particular churches without the slightest betrayal of its essential truth."¹⁵ So much for toleration of difference.

The vision expressed in the Gospel is a deeply powerful one. No one would argue, moreover, that the Catholic Church employs today the same methods it once did in expanding and securing its dominion, in imposing Church doctrine, and in stifling dissent. Yet no amount of euphemistic gloss can paint over the fact that, for long periods of history, the imposition of Catholic Church doctrine caused enormous human suffering. It ushered in the Dark Ages. This is not a model, one would think, that the European Union would want to emulate.

Yet, strikingly, one finds no acknowledgment here of the darker sides of Church history, no recognition that in expanding its dominion, the Church has not always followed the simple example of Christ.

Failure to recognize and deal with the history of persecution and repression pursued by the Church in establishing and extending its dominion - in seeking to realize its particular version of unity in diversity - then, is the second major failing of Gierycz's paper.

4. Convoluting "Christian Thought" with "Catholic Church Doctrine"

Third, throughout the paper, Gierycz consistently convolutes "Christian thought" with "Catholic Church doctrine" as if the two terms were synonymous.¹⁶ But "Christian thought" and "Catholic Church doctrine" are not identical or interchangeable. Indeed, at least since the Reformation, the history of Christianity has been in significant part a history of the ways in which Christian thought has departed from - indeed, frequently stood in condemnation of - key aspects of Catholic Church doctrine.

This is not just a quibble. It is important because later in his paper Gierycz trots out particularly Catholic values - values such as "preservation of life"

¹⁵ Gierycz, "'United in Diversity'...", 10 (emphasis supplied).

¹⁶ See, e.g., *ibid.*, 26-30.

and “protection of marriage as a union between man and woman” and “protection of family” as those terms are understood by Catholic Church doctrine¹⁷ - as if they were universally shared among all Christians. But that is obviously not the case. Many Christians, perhaps even a majority, do not subscribe to the Catholic Church’s restrictive views on abortion or its opposition to legislation that seeks to provide for death with dignity. Many Christians do not subscribe to the Church’s condemnation of homosexual behavior or its opposition to same-sex unions. Many Christians do not subscribe to the Church’s hidebound views on the proper composition of a family. The fact that such individuals and groups subscribe to views that depart from official Catholic Church doctrine in these various respects does not make them any less “Christian.” Indeed, if Christ’s example stands for dedication to the alleviation of human suffering, it may make them more so.

Failure to distinguish between “Catholic Church doctrine” on the one hand and the many alternative manifestations of “Christian thought” and “Christianity” that exist in the world today on the other, then, is a third major failing of Gierycz’s paper.

5. The “Rock” of Church-Based Moral Norms vs. the “Sand” of the Moral Foundations of the European Charter of Fundamental Rights

In what is perhaps the most controversial section of his paper, Gierycz argues that the Church-based norms reflected in the Polish constitution are superior to the norms reflected in the European Charter of Fundamental Rights, and thus, in the event of a conflict, the former should prevail. The former norms should prevail, in Gierycz’s view, because they are “absolute”¹⁸ while the latter are only relative and constantly evolving. Indeed, Gierycz believes the Charter of Fundamental Rights is fundamentally flawed: it “falls short of forming any coherent system having an absolute nature, but only [has] a cultural and historical status.”¹⁹ As a consequence, the “collective identity” of the European Union is built “on sand rather than on rock.”²⁰ Poland is justified, therefore, in resisting submission to “a mere Charter of Fundamental Rights”²¹ since the values expressed there are simply reflections

¹⁷ *Ibid.*, 34.

¹⁸ According to Gierycz, Church values are “absolute” because they have what he calls “objective properties.” They are fixed and permanent, and consequently incapable of compromise or change. See, e.g., *ibid.*, 23-24 (contrasting Church values which have an “absolute nature” with the values embodied in the European Charter of Fundamental Rights which are “flexible and changeable,” and thus “may be redefined in the future”). Cf. *ibid.*, 10 (“[Since] the Church itself is ... subordinated to these values she is not capable of changing in any way”).

¹⁹ *Ibid.*, 23.

²⁰ *Ibid.*, 24.

²¹ *Ibid.*, 41 (quoting Daniel Cohn-Bendit).

of shifting and evolving sociological preferences “established by vote.”²² As such, they can never provide an adequate “basis for moral norms.”²³ Because this lack of a secure ethical foundation, Gierycz predicts, the European approach to building unity in diversity is “probably doomed to failure.”²⁴

In responding to Gierycz’s argument, the place to begin is by asking what exactly are these “absolute” moral norms that supposedly lay special claim to our reverence and respect? Not surprisingly, they turn out to be the norms embodied in traditional Catholic Church doctrine, norms expressed by abstract principles such as “protection of life,” “protection of marriage between as a union between man and woman,” and “protection of family.”²⁵

The problem with claiming special reverential status for these norms is a double-one. First, it is unclear why these particular norms have more claim to being considered “absolute” than any other. True, they have been promulgated and imposed by Church authorities, and, true, they have been more or less faithfully adhered to by Catholic believers for a long period of time, but that does not explain why they should be considered “absolute” or why they should command our special deference and respect. It is difficult to see why these particular moral norms by inherent character partake of the quality of “absoluteness” more than any other. In any event, at least in this paper, Gierycz does not begin to make the case for our regarding them either as “absolute” or otherwise as specially deserving of our respect here.

The second problem is even more fundamental. It lies in the questionable wisdom of insisting that at any moral norm in the abstract lays claim to our uncritical acceptance without regard to its application in the real world. Everyone is in favor of “protection of life” at one level, but what does that mean - what should it mean - when applied to the difficult choices faced by women (and men) in deciding whether or not to terminate an unwanted pregnancy? Or when applied to legislation aimed at giving individuals, under certain carefully limited conditions, the possibility of ending life without unnecessary suffering and with a certain modicum of dignity?²⁶ I do not mean to suggest the answers to these questions are easy ones or self-apparent - indeed, they are questions about which intelligent and thoughtful people can disagree - but I do want to insist that they are questions. And they cannot be

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*, 34.

²⁶ For a description of the unnecessary humiliation and pain human beings are forced to suffer when denied an opportunity to end life with dignity, see Peter R. Teachout, “A Time to Die: A Proposed Constitutional Framework for Dealing with End-of-Life Decisions in a World Transformed by Modern Technology”, in Carlo Casonato (ed.), *Life, Technology and Law* (Cedam, Padova, 2007), 53-64.

answered responsibly without taking into account the application of the moral norm to particular situations in actual human beings in the real world.

The problem posed by Gierycz's argument here is not unlike that with which the English political writer, Edmund Burke, addressed in his *Reflections on the French Revolutions*²⁷ in seeking to counter what he regarded as the uncritical and irresponsible endorsement of the French Revolution by otherwise intelligent observers simply because the French Revolution stood for "liberty." Respect for "human liberty," like respect for "life," is a principle that one would readily embrace in the abstract. Indeed, "liberty" like "life" is often classified among the so-called "natural rights." But, as Burke insisted, it is wrongheaded to embrace any moral principle in the abstract without inquiring into the conditions of its application in the real world - without considering how in actual application it is combined, or not combined, with other important values in our lives.

The passage in which Burke addresses this problem (in the context of challenging the wisdom of embracing "liberty" in the abstract) bears quoting at length because of its pertinence here. "I flatter myself," Burke wrote,

that I love a manly, moral, regulated liberty as well as any ... But I cannot stand forward and give praise or blame to anything which relates to human actions, and human concerns, on a simple view of the object, as it stands stripped of every relation, in all the nakedness and solitude of metaphysical abstraction. Circumstances ... give in reality to every ... principle its distinguishing color and discriminating effect. The circumstances are what render every civil and political [and, we might add, religious] scheme beneficial or noxious to mankind. Abstractly speaking, government, as well as liberty, is good; yet could I, in common sense, ten years ago, have felicitated France on her enjoyment of a government ... without inquiry what the nature of that government was, or how it was administered? Can I now congratulate the same nation upon its freedom? Is it because liberty in the abstract may be classed amongst the blessings of mankind, that I am seriously to ... congratulate a highwayman and murder who has broke prison upon the recovery of his natural rights?

... I should, therefore, suspend my congratulations on the new liberty of France until I was informed how it had been combined with government, with public force, with the discipline and obedience of armies, with the collection of an effective and well-distributed revenue, with morality

²⁷ Thomas H.D. Mahoney (ed.), *Edmund Burke, Reflections on the Revolution in France* (The Liberal Arts Press, Inc., New York, 1955).

*and religion, ... with peace and order, with civil and social manners. All these (in their way) are good things, too ...*²⁸

“I cannot stand forward and give praise or blame to anything which relates to human actions, and human concerns, on a simple view of the object, as it stands stripped of every relation, in all the nakedness and solitude of metaphysical abstraction.” That identifies the central problem with Dr. Gierycz’s treatment here of norms such as “protection of life” and “protection of marriage” and “protection of family”: he invites us to embrace these principles in the abstract “stripped of every relation, in all the nakedness and solitude of metaphysical abstraction” without inquiring - or admitting inquiry - into the conditions and consequences of their application to particular circumstances in the real world.

But before granting to these principles our unqualified endorsement, Burke warns us, we need to ask about the circumstances of their application. “Circumstances,” as he observes, “give in reality to every ... principle its distinguishing color and discriminating effect. The circumstances are what render every civil and political scheme beneficial or noxious to mankind.” The same sorts of questions that Burke asks about applications of the principle of liberty in *Reflections* we need to ask about application of the principles Gierycz holds up to us here as embodiments of “absolute” values. Does radical opposition to abortion under any circumstances in the name of “protection of life” ameliorate or contribute to human suffering in the real world? Does it ameliorate or contribute to global poverty? Does radical opposition to end of life legislation in the name of “protection of life” ameliorate or contribute to human suffering?²⁹ Does such opposition support or detract from the important value we place on human dignity?³⁰ Does radical opposition to same-sex unions in the name of “protection of marriage and family” actually strengthen these institutions in the real world? Does it support or tend to undermine the important value we also place on respect for the equality and dignity of all human beings? I am not suggesting the answers to these questions are self-evident, or that there cannot be thoughtful disagreement about them, but I am suggesting that to hold up, as Gierycz does here, certain abstract principles as “absolute,” and thereby entitled to our unquestioning allegiance, without inquiring into their application the real world, is ethically irresponsible.

²⁸ *Ibid.*, 8-9.

²⁹ See Teachout, “A Time to Die...”.

³⁰ See *ibid.*

6. The “Collective Identity” of the European Union is Built Upon “Sand”?

A final criticism of Gierycz’s paper is his too easy dismissal of the norms reflected in the European Charter of Fundamental Rights as insubstantial and transient. The “collective identity” of the European Union, he insists, is built upon “sand” because the norms reflected in the European Charter of Fundamental Rights are not “absolute” but relative and subject to evolutionary development.³¹ Because they have been “established by vote,”³² they are mere sociological creations. And because of that, he believes, the entire European effort to establish and maintain a set of shared moral norms is probably doomed to failure.³³

This argument reflects, it seems to me, a lack of adequate appreciation on Gierycz’s part for the importance and staying power of values that have been forged gradually out of repeated encounters with real world experience. The rights and liberties embodied in the English constitution are examples of such rights, yet one would be hard pressed to argue that they are any less durable for that. Important American constitutional rights and liberties have been established and developed in much the same way. One thinks, for example, of freedom of speech and press, and of the right to privacy, and the right to equal treatment under the law. Here again, one would be hard pressed to claim that these rights and the moral norms they reflect are - simply because of the conditions of their derivation - any less worthy of our respect, or any less durable, or in any other way less substantial than the moral norms that Gierycz holds out to us as “absolute.”

It is important to remember in this regard that the fundamental principles of equality and liberty and due process embodied in the Fourteenth Amendment to the United States Constitution were initially “established by vote.” And the same is true of the norms reflected in the Bill of Rights to the American Constitution. Yet, despite having been initially “established by vote,” the norms embodied in these documents have shown impressive durability and staying power. They have shown a remarkable capacity for evolutionary development. In light of that historical experience, it does not make much sense to seek to deny the importance and staying power of such norms by claiming that, simply because of the circumstances of their derivation, they are “built upon sand.”

31 Gierycz, “‘United in Diversity’...”, 24.

32 *Ibid.*, 41.

33 “[The way adopted by the European Union] to building diversity based on sociologically constructed axiological credo is probably doomed to failure.” *Ibid.*, 41.

The fundamental mistake that Gierycz makes is to assume that because moral norms have been forged out of experience, and because they retain a capacity for evolutionary development, they are any less substantial or durable than moral norms that have been established and imposed through papal decree. Indeed, it should take no great wisdom to recognize that the evolutionary capacity of any system of moral norms is essential to preserving its vitality and durability. Edmund Burke describes the great strength of the English constitutional system in just such terms:

*Our political system is placed in a just correspondence and symmetry with the order of the world and with the mode of existence decreed to a permanent body composed of transitory parts, wherein, by the disposition of a stupendous wisdom, molding together the great mysterious incorporation of the human race, the whole, at one time, is never old or middle-aged or young, but, in a condition of unchangeable constancy, moves on through the varied tenor of perpetual decay, fall, renovation, and progression.*³⁴

Contrary to what Gierycz argues here, stasis is not a survival trait when it comes to systems of moral norms. Any system of moral norms that does not retain a capacity for evolutionary development is.

Failure to appreciate adequately the importance and staying power of moral norms that have been gradually forged out of encounters with actual human experience, then, is the fifth major defect of Gierycz's paper.

7. Conclusion

Gierycz does a helpful service here in pointing out the respects in which the vision of a European community "united in diversity" has important precedential underpinnings in the experience of the Catholic Church. He is right, in addition, to call attention more generally to the positive contributions Christianity has made to European civilization. He is right in insisting that it is impossible to understand European culture or cultures as they exist today without reference to those contributions. In the course of his argument, he offers an potentially helpful account of how religious ideas and values and principles are passed on to secular systems through what he calls "transmission channels." Finally, Gierycz is right in insisting that, in certain important respects, the Church's experience offers a model to help guide European Union as it seeks to realize the vision expressed by its motto.

The problem is that Gierycz takes the argument too far and takes it in ways that are, or at times seem to be, warped by religious partisanship. The

³⁴ Mahoney (ed.), *Edmund Burke...*, 38.

influences he is seeking to identify and the moral issues he wants to discuss require much more subtle and discriminating treatment than he provides here. There is nothing wrong with holding up the experience of the Church as a model to which the European Union might refer in seeking to realize the vision of a European community “united in diversity,” so long as that is qualified by the understanding that the European Union can learn, not only from the successes of the Church in this regard, but also from its errors and excesses. There is nothing wrong with insisting that Christian norms deserve a place at the table in any consideration of norms to be included in the body of norms adopted as the moral foundation of the European Union, so long as those norms reflect Christian values broadly understood and are not confined to the particular norms of a particular Christian church. There is nothing wrong with claiming that Christianity has contributed in important and positive ways to the development of European civilization so long as that insistence does not exclude recognition of the contributions that other religions - Judaism and Islam, for example - have made to that development. There is nothing wrong with claiming that protection of life and of marriage and of the family are, and should be treated as, important values, so long as that does not become a justification for seeking to privilege those values over other values we hold important. There is nothing wrong, indeed, for asking that the particular values embodied in Catholic Church doctrine be accorded respect and consideration in any effort to establish a set of shared values for the European Union, so long embrace of those values can be shown to contribute, in actual application to particular individuals under particular circumstances, to the happiness and welfare and sense of worth and dignity of those affected.

Bibliography

Gibbon Edward, *The Decline and Fall of the Roman Empire, Vol. 1* (Modern Library ed., New York, 1994).

Gierycz Michał, “United in Diversity’: The Church’s Experience and the European Union’s Identity Motto” 2 *European Diversity and Autonomy Papers - EDAP* (2008), at www.eurac.edu/edap.

Mahoney Thomas H. D. (ed.) *Edmund Burke, Reflections on the Revolution in France* (The Liberal Arts Press, Inc., New York, 1955)

Teachout Peter R., “A Time to Die: A Proposed Constitutional Framework for Dealing with End-of-Life Decisions in a World Transformed by Modern Technology,” in Carlos Casonato (ed.) *Life, Technology and Law* (Wolters Kluwer, Italy, 2007).

Published in the EDAP series:

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