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Diritto Religione Società Multiculturali
Law Religion Multicultural Societies

Право Религия Мультикультурные Общества

انون والدين في المجتمعات متعددة الثقافات
多元化社会中的法与宗教

LAW, RELIGION AND COVID-19 EMERGENCY

EDITED BY
PIERLUIGI CONSORTI

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DiReSoM Papers

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LAW, RELIGION AND COVID-19 EMERGENCY

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Pierluigi Consorti

DiReSoM (Diritto e Religione nelle Società Multiculturali – Law and Religion in Multicultural Societies) is a research group created in 2017 by Italian Scholars in Law and Religion.
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INDEX

PIERLUIGI CONSORTI, *Law, Religion and Covid-19 Emergency. Introduction* p. 7

LAW AND RELIGION

PIERLUIGI CONSORTI, *Religion and virus* p. 15

LUIGI MARIANO GUZZO, *Law and Religion during (and after) Covid-19 Emergency: the Law is Made for Man not Man for Law* p. 19

ANTONINO MANTINEO, *I have a dream: restarting, but going where?* p. 29

STATE LAW

MARIA LUISA LO GIACCO, *In Italy the Freedom of Worship is in Quarantine, too* p. 37

FABIO BALSAMO, *The loyal collaboration between State and religions at the testing bench of the Covid-19 pandemic. A perspective from Italy* p. 47

GABRIELE FATTORI, *Religious freedom at the time of coronavirus* p. 57

DOMENICO BILOTTI, *Punishment, virus and religions* p. 65

VALERIO D'ALÒ, *Covid-19: limitations to public worship in Italy, Spain and Poland* p. 73

ENRICA MARTINELLI, *The Greek Orthodox Church at the time of the SARS-CoV-2 epidemic* p. 81

ENRICA MARTINELLI, *Orthodox Easter Covid-19: Israel allows the opening of the Holy Sepulcher to receive the "Light of Resurrection"* p. 91

- GIUSEPPINA SCALA, *Freedom of the Profession versus the Health Emergency: The Physical and Spiritual Protection of the Lutheran Citizen* p. 97
- NIKOLA B. ŠARANOVIĆ, *Religion, law and Covid-19 emergency: a brief report from Montenegro* p. 105
- STEFANO PICCIAREDDA, *Religions, Africa and Covid-19* p. 109
- MASSIMO FAGGIOLI, *Pandemic and religious liberty in the USA: between privatization of the Church and neo-integralism* p. 119
- MUSTAFA YASAN, *The measures taken in the field of religion in turkey against the threat of pandemic Covid-19 virus* p. 125
- CATERINA GAGLIARDI, *Saudi Arabia's caution in times of health emergency* p. 129
- CHIARA LAPI, *The Saffron Wave Against Virus. The Hindu Nationalists and the Covid-19 Emergency* p. 137
- VASCO FRONZONI, *In Pakistan the mosques will remain open for Ramadhan but with restrictions* p. 141
- MASSIMO INTROVIGNE, *Lesson from the Shincheonji Case in South Korea: Monitoring Without Scapegoating* p. 145
- SIMONE BALDETTI, *First observations on law, religion and Covid19 in Japan. Between the "Confucian style" lockdown and religious response to pandemic* p. 151
- ANTONELLO DE OTO, *The Republic of San Marino and the practice of worship in the Covid-19 era: between history, common law and emergency decrees* p. 157
- PIERLUIGI CONSORTI, *Coronavirus emergency in the monastic autonomous republic of Mount Athos. Contagion without covid-19* p. 169
- MATTEO CARNÌ, *Vatican City State and Covid-19 emergency* p. 173

ANTONELLO DE OTO, *Andorra and Covid-19. Explanatory note* p. 187

RELIGIOUS LAW

LUIGI MARIANO GUZZO, *Hygiene of the Body and of the Spirit* p. 191

DANIELA TARANTINO, *“Non in pane solo vivet homo”. Catholics in front of Covid-19* p. 195

FRANCESCA OLIOSI, *“Mercy is what pleases me, not sacrifice”: liturgies, in pandemic, not rites* p. 209

DANIELA TARANTINO, *“I absolve you”. The priest medicus animarum at the time of the Covid-19* p. 213

STEFANO TESTA BAPPENHEIM, *Does the Covid-19 pandemic authorize the derogation from the canonical rule of absolution necessarily preceded by individual confession? (canon 961cic)* p. 221

MARIA D’ARIENZO, *Is the suspension of mass in public form legitimate?* p. 251

ENRICA MARTINELLI, *The Talmud teaches: “When pestilence is in the city, stay inside”. (Bavà Qammà 60)* p. 253

VASCO FRONZONI, *From social distance to Muslim solidarity proximity at the time of Covid-19* p. 261

POSITION PAPER

DIRESOM RESEARCH GROUP, *Proposal for a safe resumption of Religious Celebrations in Italy* p. 271

RELIGIOUS LAW

THE TALMUD TEACHES: “WHEN PESTILENCE IS IN THE CITY, STAY INSIDE” (BAVÀ QAMMÀ 60)*

Enrica Martinelli

As the CoViD-19 epidemic continues to rage all over the world, Israel’s chief rabbi, David Lau, has invited Jewish believers to observe a day of fasting and prayer on Wednesday 25 March, the eve of the first day of the Hebrew month of *Nissan*¹. In a statement released on 22 March, rabbi Lau wrote that “the sword is hitting the entire surface of the planet”, and for believers it is a message to humanity to wake up and move towards an internal renewal that cannot be postponed. Therefore it is time to observe the ancient rule that urges *teshuvà* (repentance), *tzedakà*² and

* Submitted: April 3rd 2020. Published: April 10th 2020. For ITA version [click here](#).

¹ The choice of the eve of *Nissan* is very significant since the first day of *Nissan*, *Rosh Chodesh Nissan*, is the beginning of the Jewish calendar. The order to count time and establish the calendar is the first *Mitzvah* that Israel receives from G-d in view of the next liberation from slavery in Egypt. On the first day of Nissan, Israel, begins to observe the *mitzvòt* by counting time and giving meaning to the existence of time. Israel begins to create the world in collaboration with G-d (observing the *mitzvòt*) on the first day of *Nissan*. *Nissan* is the month of freedom, salvation and love. A *Nissan* G-d has redeemed Israel and *Nissan* will redeem it in the future. *Rosh Chodesh Nissan* is *rachamim*’s New Year, mercy.

² This literally means “to dispense loving kindness” and is a fundamental social value in the daily life of Jews.

fasting³, meditating on one's actions, striving for spiritual improvement and making real personal [change](#). On this occasion, every member of the people of Israel must engage in the rigorous application of the *mitzvoth*, both of which guide the relationship between man and G-d and those which determine human relations. Therefore fasting⁴ will be accompanied by the afternoon prayers of *Minchà*, recited for the salvation of all generations; those who pray in solitude because of the meeting ban⁵ will also recite the *Selichot* (prayer for forgiveness). The chief rabbi assures that merciful G-d will be able to listen to the plea, save the people of Israel and protect all humanity from catastrophe.

Rabbi Riccardo Di Segni⁶, chief rabbi of Rome, also expressed similar words. He recalled the serious epidemics that the Bible itself testifies as a constant presence in Jewish history, observing that the current pandemic poses a question of meaning, as it challenges man to question his ability to fight an unknown and invisible enemy, counting only on rational or scientific forces.

Forced isolation due to the need to prevent contagion is an opportunity for separation from the community and for introspection, rediscovering the fragility of humanity and the richness of the “traditional Jewish religious recipe (and not only) because of these circumstances” based on the order to follow medical instructions and on three subsequent points: “Social

³ See [here](#) the press release on the fast of the chief rabbi of Rome, dated 23rd March.

⁴ For those who cannot practice fasting, for health reasons or otherwise, not even half a day, fasting with the tongue is prescribed, excluding the reading of the Torah and prayer.

⁵ Without a *minyan*, which is the ten-person quorum needed for public prayer. For Orthodox Jews, ten adult men must be present for a *minyan* to exist.

⁶ In an interview released to *Il Messaggero* newspaper on 19 March, available [here](#).

solidarity (because other human beings are more at risk than us), prayer (because the human perspective is not everything) and the review of one's own behavior which is perhaps the most difficult thing to do".

The words of the rabbis significantly link the observance of religious precepts to the rigorous application of state regulations; indeed, respect for the latter is itself a religious obligation, as the orthopraxis of Judaism translates precisely into the observance of the *mitzvot*, and the law represents its ontological essence, as recalled by the Talmudic saying of Solomon "Dina de-Malkuta Dina" ("The law of the kingdom is law"). This interpretation is a constant in the history of the Jewish people, characterized by the phenomenon of "double obedience"⁷ to Halakhic and civil law⁸.

Compliance with the law is a reminder of the responsibility that every Jew is required to observe in current circumstances, thus reconciling faith with reason. This coronavirus challenges the public good and calls for observance of the fundamental Jewish principle of the sacredness of human life, which belongs only to the Creator who forged it in His image and likeness⁹. G-d

⁷ Clearly represented by the precise observation of F. Lucrezi, *Appunti di diritto ebraico*, I, Giappichelli, Torino, 2015, p. 50.

⁸ For a historical reading of the principle and how it survived the values of the Enlightenment and the French Revolution, see G. Graff, *Separation of Church and state, Dina de-Malkuta Dina in Jewish Law, 1750-1848*, University of Alabama Press, Birmingham 1985. For an in-depth application *there* of to family law, see Rabbi A. Di Porto, *Dina demalkuta dina*, in *Le relazioni familiari nel diritto interculturale*, in I. Zuanazzi and M.C. Ruscazio (ed.), Libellula, Tricase, 2018, pp.73-81.

⁹ "Our sages teach us that God, in granting each of us a soul, invites us to be His partners in creation. We all have the power to act and behave in a way that helps make the world a better place". Reflection by rabbi Warren Goldstein, chief rabbi of South Africa, available [here](#).

commands: “Now choose life, so that you and your children may live” (Deut. 30:19), and this precept represents the *Knotenpunkt* through which the interpreters must reconcile every instance posed by contingent and changing needs with the protection of the principles on which tradition is based.

From this fundamental postulate it follows that saving a human life is a religious duty; that in the event of a threat to life, any religious precept must be suspended; that man is the guardian of his body, which has been given to him and which must be preserved in the best way¹⁰; that believers must practise compassion, which derives from the precept of loving one's neighbor as oneself¹¹.

Therefore, compliance with all the *mitzvòt*, even in the most problematic circumstances, is combined with the irrepressible obligation to protect one's own health and that of others by every means¹². Therefore we can understand how compliance with the health recommendations of competent bodies and instructions issued by civil authorities in different countries, including the lock-

¹⁰ For example, by not exposing yourself to the danger of contagion or by behavior that could cause contagion or that could cause other diseases or by accepting all the necessary treatments for recovery.

¹¹ “With all of humanity originating from two people only, our sages say that God also conveys the sanctity of every human life. Just as saving Adam or Eve at the dawn of Creation would have meant saving the entire world, so too should we recognize that each life has the value of the world”. See the reflection of rabbi [Warren Goldstein](#), cit.

¹² “These two fundamental duties must be reconciled as much as possible, even if the protection of life and health takes precedence over everything”. [Statement](#) from the Assembly of the Rabbis of Italy.

The chief rabbi of France, Haïm Korsia, talks about the principle of *Pikuach nefesh*, during the religious program *A origin Berechit. Emission spéciale Pessab. La préservation des vies* aired on Sunday 5 April on *France 2*. An excerpt is available [here](#).

down, are a halakhic obligation¹³, pursuant to which synagogues, schools and community facilities were [closed](#) and common prayer services were canceled, obliging people to undertake domestic prayer only.

In Israel, religious authorities supported state authorities in taking the necessary measures to contain the spread of the infection¹⁴, encouraging worshippers to stay in their homes and

¹³ *On this point Rabbi Alberto Somekh, states: “I believe that the most significant Talmudic passage for our current situation is the following: *deverba-ir – kannèsraglekha* (Bavà Qammà 60): ‘When pestilence is in the city, stay inside’”, i.e.: stay at home. Talmud contains three verses that support this recommendation. The first is taken from the last plague of Egypt, the death of the firstborns, which happened at midnight. Jews were asked not to leave their houses until the morning (Shemot 12,27), because once the plague hit it would make no more distinctions. And should *there* be any doubt about the restriction only being valid for one night *there* is another verse: “My people, come into your chambers and close your door about you; hide for but a moment, until the wrath is past’ (Yesha’yahu 26,20). And should we again think that it may do us good to go out together with others to overcome the fear within, we should remember that “From outside, the sword (of disease) will bereave, and terror from within” (Devarim 32,25). Hence, recent government regulations are perfectly in line with tradition and should be respected. Anyone who leaves their house without a reason to do so is not just breaking a law of the State, but also Halakhah”. Compare [here](#).*

¹⁴ With the sole exception of the strong - and sometimes violent - opposition from ultra-Orthodox Jews. Numerous prominent rabbinic leaders in Israel announced that they would not comply with government directives and that their schools and *yeshivas* would remain open and lessons regularly taught, justifying such a decision on the basis that children studying *Torah* offer physical protection to the Jewish people (compare [here](#) and also [here](#)). After weeks of stalemate, the oldest ultra-Orthodox rabbinic leader, rav Chaim Kanievsky, ordered community members to obey government orders of social distancing, equating contrary behavior to attempted murder, subject to being reported to the police: see [here](#).

The spread of numerous infections in ultra-Orthodox communities is worthy of note (the ultra-Orthodox city of Bnei Brak was found to have the highest number of patients per capita infected with coronavirus: see [here](#)), all educational

[celebrate *Shabbat*](#) and the other religious holidays that precede *Pesach*¹⁵, without going to the Temple.

In Italy, state provisions have also prohibited funeral ceremonies, making it impossible for a *minyan* and consequently the recitation of the mourning *kaddish*, even for those who die due to reasons other than viral infection. Similarly, ceremonies related to ritual circumcision, generally festive and participatory occasions, and the *mikveh* bathing ritual, have become impractical.

The most painful deprivation concerns the impossibility to celebrate the imminent Passover according to traditional methods. The Passover *sèder* is the most important occasion for Jewish families, and also involves those who are less observant, as it summarizes the fundamental principles and values of Judaism and takes place according to a complex ritual of biblical derivation¹⁶ that this year will not be possible to follow, forcing many families

institutions have now been closed by order of the Minister of Health, MK Yaakov Litzman. See the *Arvenire* newspaper of 31 March (linked [here](#)).

¹⁵ See [here](#). Many holidays, also in Italy, were celebrated in streaming, such as, for example, the *Purim* festival, with the reading of the *Meghillat Esther*, thanks to the purchase of the SW Zoom meeting platform by Ucci. See [here](#).

The statement from the Assembly of Italian Rabbis provided detailed instructions on how it is possible to fulfill the *mitzvot* related to the celebrations without violating the Halakhic duty to comply with government regulations.

¹⁶ *Passover is the stem cell of the Jewish people*, in *The New York Times*, 31 March 2020. Rabbi Roberto Della Rocca explains the message that can be drawn from the Jewish tradition, in this moment of great difficulty. “Our history is the paradigm of resilience. Just think that the *Haggadah*, which we will read the first two evenings of *Pesach*, and which sees us as direct protagonists of the exodus from Egypt, has invariably been read over the centuries: even in the most tragic moments the Jews have not ceased to teach their children, during the *Sèder*, that the Eternal Father continued to free us from slavery and that we were free” (see [here](#)).

to remain separate or to meet only in [online video conferences](#)¹⁷. The CoViD-19 pandemic has deeply attacked Jewish religiosity, characterized by a family and community life which has been wounded by the necessary social distancing, causing afflictions on the same psychological wellbeing of believers, which the Communities try to sustain by combining “institutional support”¹⁸ with respect for the deepest Tradition of Jewish religious life, which invites us to “stay in ourselves, to return to ourselves”, developing the domestic dimension of Judaism¹⁹ by compensating the necessary renunciation of the community dimension, rediscovering the sense of *Shabbat*, “momentary pause to listen to our inner voice, an interruption, to ask ourselves who we are and where we are going, in fear that the agitation, the profuse energies, the conflicts undertaken [...] will not make us forget the values that justify the existence of a Jewish community and of the people who make it up. Our sages say that if all Jews observed a Shabbat

¹⁷ Israel has limited Easter celebrations to 10 people - a paltry number taking into account the many large families – and President Donald Trump has asked Americans to do the same. However, not all rabbinic authorities agree that online celebrations are possible or lawful: in this regard, see the [opinion](#) of the Assembly of Rabbis of Italy.

¹⁸ See interview by Noemi Di Segni, President of the Union of Italian Jewish Communities to The Jerusalem Post available [here](#).

¹⁹ “Those who are alone will not have a less important Pessah, they will simply have a real Pessah *where* they will deepen the sense of liberation”. Just as happened in the land of Egypt, when the angel of death passed and the Jewish people had to lock themselves in the house to be saved, at the present moment, it is necessary to stay in houses to be spared from the epidemic. These were the words of rabbi Haïm Korsia in [www.diresom.net](#). On the way of understanding and experiencing the Passover holidays spent in isolation, see also the [Open letter from the chief Rabbis of the world](#).

entirely, the Messiah would come immediately [...]. Let us take this great opportunity!"²⁰.

²⁰ Rabbi Roberto Della Rocca, Director of the Training and Culture Area of the Union of Italian Jewish Communities. See his reflection [here](#).



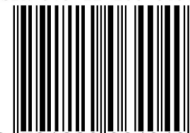
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1 – *Law, Religion and Covid-19 Emergency*, edited by Pierluigi Consorti

As scholars engaged in the study of the legal regulation of the religious phenomenon, we decided to create a web space to collect documents, comments and other useful materials related to the Covid-19 emergency, in order to assess the outcomes of the normative decisions made by state and religious authorities. So, on March 8th we have created www.diresom.net. By the end of April, we had already published more than 500 documents and comments related to this issue, and more than 20.000 unique visitors had surfed our website. Therefore, we decide to edit an open source book to share in a more orderly way the comments that we have already published online, thus giving the possibility to consult these first guidelines to all those who want to study or analyze the legal reaction, both state and religious, to this pandemic.

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