

DIRITTO ECCLESIASTICO

Lezione 1

1) Il diritto ecclesiastico: nozione, breve storia della disciplina, e motivazioni dell'importanza e utilità del suo studio per le scienze giuridiche

1.1) Definizione generale di diritto ecclesiastico, distinzione e rapporti con altre discipline

Il diritto ecclesiastico è il diritto dello Stato che regola il fenomeno religioso. Nella sua denominazione spagnola questo carattere di essere essenzialmente diritto pubblico o diritto dello Stato emerge più chiaramente rispetto alla denominazione italiana perché viene denominato *derecho ecclesiastico* dello Stato e più chiara appare anche la definizione francese *droit civil ecclésiastique*. Mentre la definizione del mondo anglosassone è più ampia e in un certo senso più generica perché si preferisce parlare di *law religion*, ovvero di diritto della religione. E data la definizione appunto di diritto ecclesiastico come diritto dello Stato che regola il fenomeno religioso emergono le differenze ma anche i rapporti con le altre discipline, giuridiche in primo luogo, innanzitutto con il diritto canonico che è il diritto interno della chiesa cattolica. Diritto canonico ed ecclesiastico nel sistema universitario italiano fanno parte di un unico settore scientifico disciplinare definito *Ius unidici* e di un unico settore concorsuale denominato 12C2 e questo spiega il forte legame tra i due insegnamenti. Ma il diritto ecclesiastico ha un forte legame anche con tutti gli altri insegnamenti di diritto religioso come quello islamico ed ebraico. Ma vi è anche un profondo rapporto del diritto con altre discipline giuridiche, ad esempio con il diritto costituzionale, facendo riferimento alle norme costituzionali sul diritto di libertà religiosa e sui rapporti tra lo Stato e le confessioni religiose. Vi è un collegamento anche con il diritto privato nell'istituto del matrimonio concordatario o, più in generale, nell'istituto del matrimonio religioso ad effetti civili (matrimonio celebrato davanti a ministri di culto cattolico e di altre confessioni religiose che hanno effetti civili). Ma vi sono anche collegamenti con il diritto internazionale perché il diritto di libertà religiosa ha una tutela costituzionale interna all'ordinamento italiano ma ha anche un'ampia tutela a livello europeo e di Nazioni Unite. Vi sono però anche collegamenti con il diritto penale dati ad esempio dalle norme previste dall'ordinamento penale italiano che sanzionano penalmente le offese alle confessioni religiose, al sentimento religioso dei cittadini. Vi possono essere dei legami con il diritto processuale civile, ad esempio riguardo il tema del riconoscimento delle sentenze ecclesiastiche del giudice canonico; così come ci sono collegamenti con il diritto processuale penale riguardo ad esempio l'istituto che dà facoltà ai ministri di culto delle varie confessioni religiose di astenersi dal testimoniare nei processi penali e tutelano il c.d. segreto confessionale. Vi sono collegamenti molto forti con il diritto amministrativo pensando a tutta la materia dei riconoscimenti religiosi; con il diritto tributario riguardo al trattamento fiscale degli enti religiosi ma anche riguardo al finanziamento delle confessioni religiose attraverso meccanismi tributari. Collegamenti ci sono anche con il diritto del lavoro in tema del lavoro dei religiosi e dei ministri di culto, ma anche del lavoro che si presta nell'ambito delle c.d. organizzazioni di tendenza cioè organizzazioni caratterizzate da un determinato fine ideale come ad esempio le scuole. Vi sono poi naturalmente degli importanti collegamenti con discipline non giuridiche, in particolare con le scienze storiche e con una materia in particolare, ovvero la storia e sistemi dei rapporti tra lo Stato e con le confessioni religiose che studia appunto i sistemi di relazione, nel corso

Diritto Ecclesiastico Diritto Ecclesiastico

Thomas Griffiths



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