



State and Religion: the Italian System

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1. The element, which shows better the nature of the Western systems of Church-State relations, is the distinction between spiritual and temporal, sacred and secular, religion and politics. I am intentionally using the term "distinction" and not the term "separation" because there are many links between these two areas of the human life. However, the evangelical principle "render to Caesar the things that are Caesars, and render to God the things that are Gods" has always been the base of the relationship between Church and State in the West.

Of course, depending on time and place, this principle was interpreted in different ways: until the end of the first millennium of the current era, kings and emperors exercised a strong control on the Church, appointing bishops and popes, while in the first part of the Middle Age the superiority of the spiritual power on the temporal one was affirmed so that the popes were able to exercise some political competence. But, apart from the pendulum of history, the philosophical and theological idea of distinction between spiritual and temporal has been translated into two legal principles: the autonomy of Church and State each having its own specific competence- and their cooperation, as neither the spiritual nor the temporal side of the human life are completely apart.

2. The second root of the Western systems of Church-State relation is the pre-eminence of the personal conscience, the idea that the ultimate decision in matters concerning the meaning and the destiny of the man and the world belongs to the individual. Of course there are some limits: nobody can violate the laws alleging simply the imperative of his/her conscience and most Western societies are based on the democratic principles and the majority rule. Nevertheless the idea that the individual conscience is some sort of sanctuary which must be respected is very common, as it is shown by the wide acceptance of the conscientious objection in the Western legal systems.

Again from this philosophical and theological principle we derive a legal consequence, the right of religious liberty, i.e. the idea that every person has the fundamental and native right to choose, practice and manifest his/her religion or belief without any interference on the part of the State. It is possible to find some support for the principle of religious freedom in the Christian tradition, but the way this principle has been shaped and is currently understood is mainly due to the Enlightenment.

Therefore, summing up, three principles govern the relationship of Church and State in the West: individual religious liberty, autonomy and cooperation of Church and State. The Italian system is a combination one among the many that are possible- of these principles.

3. Religious liberty will be the starting point of our exam of the Italian model. From the point of view of the individual rights to religious freedom and equality, the Italian legal system appears to be in step with the main provisions of international law in force in this area and the principles contained in most of the Constitutions of other Western countries. The fundamental

provision is art. 19 of the Italian Constitution which declares: "every man has the right to freely profess his faith in every possible form, alone or in association with others, to promote it and to exercise its worship in public or in private". Moreover, art. 3 affirms that "all citizens have the same social dignity and are equal before the law, regardless of their sex, race, language, religion, political opinions or their personal or social circumstances". These provisions are aimed at guaranteeing everybody, including non-citizens, religious freedom and equality: the predominant interpretation of the term "religion" supports the extension of the guarantees of art. 3 and 19 of the Constitution also to the profession of atheist or agnostic doctrines. The introduction, in the seventies, of special rules allowing conscientious objection to military service and to the participation in abortions contributed towards solving some important problems of religious freedom. Other problems however remain unsolved. Here the main difficulties are those caused by religious groups which have only appeared in Italy relatively recently: it is the case, for example, of the refusal of medical treatment for religious reasons and the refusal to work on religious holidays. This last problem has been partially solved: the right to abstain from working on religious holidays is now granted to Adventists and Jews, but not yet to Muslims who did not conclude an agreement with the Italian State regarding this point. Religious freedom, however, cannot be reduced to its individual dimension. It also has a collective dimension, which concerns the position of religious groups in State law. The rights to establish and maintain worship places, to teach a religion, to solicit and receive financial contributions and donations are part of the right of religious liberty and do not affect only single members of the religious group but its organisation as well. From this point of view it must be emphasised that in Italy any group with religious aim may be founded without the necessity of any authorisation or prior registration and may freely operate within the legal system as far as it does not violate the law. A religious group may attain private legal capacity by constituting itself as a non-recognised association according to the Civil Code (it is the most simple model of legal capacity, the model that is made use of also by political parties and trade unions). In this way a religious group attains legal personality in complete liberty, without its constitutive act or statute being submitted to any form of State control. This type of legal capacity is not without limits: a non-recognised association enjoys independence in property matters and the ability to take legal action but, for example, cannot receive donations higher than a modest value. Despite these limits, it is possible to conclude that a first level exists, where a religious group can function without any recognition or registration by the State and still be protected from any repressive intervention by public powers, provided it respects the general laws which apply to any kind of association. The same conclusion can be reached regarding individual religious freedom and equality: there is a basic level where anybody can profess his/her religion on equal terms with anybody else and within the only limits established for any manifestation of conscience or thought.

Co-operation is the second principle of the Italian model. Selective co-operation would be a more appropriate definition, as the Italian State does not cooperate in the same way with any religious group. Some groups receive more co-operation, which means more advantages, by the State, some others must content themselves with a lesser degree of co-operation and advantages. From the angle of the co-operation between State and religious groups, the Italian system is a three-tier system. On the lower level there are the religious groups recognised as religious associations according to a law of 1929 conceived especially for groups with religious aims. About thirty denominations in Italy have been recognised in such a way, and among them there are the Jehovahs Witnesses, the Mormons, the Buddhists and the Muslims. To be recognised, these religious groups need to present certain qualifications. Broadly speaking, they need to have a religious purpose and some degree of organisation; then the rules governing the religious group must not be in conflict with the States law; finally the group must have some roots in the history of the country. Some of these qualifications are not clearly defined: what does it mean exactly "religious purpose"? And which are the indicators of the place a religion has in the history of a country? Therefore the State enjoys some degree of discretionary power when it decides to recognise a religious group as such

and that has given place to some criticisms. Anyway, once recognised, a religious group enjoys a number of advantages, particularly in the field of taxation. Even more important than that, the recognition is the basic pre-condition for being admitted to file an application for concluding an agreement with the Italian State: and this brings us to the second level of religious organisations in the Italian legal hierarchy. Six religious groups have signed an agreement with the Italian State: they are the Jewish community, the Adventists, the Baptist, the Lutherans, the Valdenses (a small community living in Italy and France) and the Pentecostals; two more groups -the Buddhists and the Jehovahs Witnesses- should sign an agreement in the next few months. An agreement is a convention between the Italian State and a religious group, which de facto has a force comparable to an international convention. The conclusion of an agreement opens the way for most of the advantages provided for religious groups in the Italian legal system, including the right of the members of the group to deduct from their taxable income the amount of money donated to their denomination, the right to provide religious teaching in State schools, the right to receive a portion of the taxes assigned by the State to religious denominations, etc. Moreover in the agreement find frequently place some specific provisions requested by the beliefs of a religious community: for example the exemption from military service for the Adventists, the right to abstain from work on Saturday for the Jews, etc. On the other hand the conclusion of an agreement with a religious group is fully part of the discretionary powers of the State, that is it is a political choice which cannot be contested before a court by the group whose application for an agreement has been rejected. It is easy to see that the more the co-operation and the advantages become relevant the more the discretionary powers of the State widen. A margin of flexibility in dealing with the various applications coming from religious communities is by sure appropriate, but it is possible to wonder whether the existing discipline does not allow too much indefiniteness: some more precise rules about the conditions requested to get an agreement and the procedure the State must follow in examining the applications would dissipate any suspicion of partiality on the part of the government. Finally, at the top of the list, is the Catholic Church which, because of the number of its members and its special significance in Italian history, enjoys a preferential position secured by a concordat and numerous regulations and laws. Concerning religious assistance in prisons, hospitals and in the army, religious teaching in State schools, tax exemptions and in many other fields the Catholic Church enjoys more support from the State than any other religious group in Italy.

4. The autonomy and self-determination of religious groups represent the last feature of the Italian model. Art. 7 of the Italian Constitution recognises the sovereignty and independence of the Catholic Church in its own order and art. 8 grants all other denominations a high degree of internal autonomy: they are free to organise themselves in the manner they regard as being opportune and they are protected from any interference of the State in the field of their doctrine, ideological principles and organisational structure. Moreover the last sections of art. 7 and 8 of the Constitution provide that the State may define the legal position of a specific religious group only by way of a concordat or an agreement, that is under the condition of reaching an understanding with that religious group. The two sections also provide, once this arrangement has been come to, any amendment may be made only on the basis of a new arrangement between the State and the religious group, not on the unilateral initiative of the State. In this way the Catholic Church and the six denominations which have reached an agreement with the State have the security that the legal status they have at present will not be altered against their will. Behind these provisions it is possible to detect the idea of distinction between spiritual and temporal I referred to at the beginning of my exposition: the State, being a secular institution, has no competence to intervene in the inside of a religious group, which is a spiritual organisation. This last qualification defines a territory which is beyond the boundaries of the State power.

5. Up to now I described the main features of the Italian model of Church and State relations. It has some positivesides and also some shortcomings.As I said before, once the basic

freedoms have been granted to all religious groups, the Italian system becomes selective and starts supporting the religious groups according to the importance each of them has in the history and culture of the country. It is reasonable to say that history and culture are not without importance: therefore the State should take them into consideration when it starts co-operating with a religious group. On the other hand the discretionary power of the State should be reduced and defined more carefully in order to avoid unreasonable discriminations. A second shortcoming regards the lack of a law common to all religious communities. Such a law should regard the problems which do not require a concordat or an agreement but can be solved through a uniform discipline, applicable to any religious group: that is the case, for example, of spiritual assistance in hospitals, prisons and in the army or deduction of donations to a religious group from the taxable income of the donor. When such a law will be in force (now it is in discussion at the Parliament), the concordats and agreements could deal only with the problems which are of specific interest to a religious group, like ritual slaughter for Muslims and Jews, conscientious objection to military service for Jehovahs Witnesses, abstention from working on Friday or Saturday for Muslims, Jews and Adventists. While maintaining the co-operation between the State and the religious groups, the content of the agreements could become more "up to the point" and disparities among different religious communities would be reduced.

One final remark. Why the Italian model I tried to describe is defined as a Catholic model in the title of this paper ? First of all because it is common to a number of Catholic countries in Europe : broadly speaking the same system exists in Spain and Poland and it is likely that in the near future it will be adopted also by Portugal, Croatia, Hungary and some more countries. More to the point, the Italian model reflects many principles contained in the declarations of the Vatican II Council. The self-determination of the Church and its autonomy from the State is a long-standing principle of the Catholic doctrine, strongly reaffirmed during the Vatican II Council. The same Council declared that every person has a right to religious liberty which must be recognised and sanctioned as a civil right, even if that person follows a religion different from the Catholic one. On the contrary, coming to the status of religious groups in the legal system of the State, the Council did not support a complete equality and left open the possibility of a different status as far as it does not infringe upon the religious liberty. It is easy to see that the teachings of the Catholic Church have had a strong influence in shaping the Italian system of State-religion relationship. I am not saying that the Church took an active part when the laws governing that system were written. I am saying that, in Italy like in any other country, there is a cultural heritage which cannot be forgotten and, in Italy, Catholicism is an important component of that heritage. That is the reason why any exam of the relations between State and religion must move from history, as it is being made in this conference.